

THELEN, MARRIN, JOHNSON & BRIDGES

ATTORNEYS AT LAW

LOS ANGELES  
WASHINGTON D C  
OAKLAND  
NEWPORT BEACH

TWO EMBARCADERO CENTER  
SAN FRANCISCO, CALIFORNIA 94111-3995  
(415) 392-6320

TELEX 34-0906 CABLE THEMAR  
FAX (415) 421-1068

16621

HONG KONG  
NEW YORK  
HOUSTON  
SAN JOSE

RECORDATION NO

FILED 1425

RECORDATION NO

16621

FILED 1425

NOV 22 1989 -11 35 AM

INTERSTATE COMMERCE COMMISSION

NOV 22 1989 -11 35 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO

16621

FILED 1425

NOV 22 1989 -11 35 AM

INTERSTATE COMMERCE COMMISSION

November 22, 1989

RECORDATION NO

16621

FILED 1425

NOV 22 1989 -11 35 AM

INTERSTATE COMMERCE COMMISSION

Office of the Secretary  
Recordations Unit  
Room 2303  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, D.C. 20423

Attention: Ms. Mildred Lee

Dear Ms. Lee:

Enclosed are an original and one certified true copy of each of the documents described below, to be recorded pursuant to 49 U.S.C. § 11303.

The first document, Equipment Lease Agreement, dated as of November 1, 1989, is a primary document. The names and addresses of the parties to such document are as follows.

First Security Bank of Utah, National Association  
79 South Main Street  
Salt Lake City, Utah 84111

Burlington Northern Railroad Company  
777 Main Street  
Fort Worth, Texas 76102

The second document, Lease Supplement No. 1, dated as of November 22, 1989, is a secondary document. The names and addresses of the parties to such document are as follows:

First Security Bank of Utah, National Association  
79 South Main Street  
Salt Lake City, Utah 84111

Burlington Northern Railroad Company  
777 Main Street  
Fort Worth, Texas 76102

The third document, Security Agreement and Trust Indenture, dated as of November 1, 1989, is a primary document. The names and addresses of the parties to such document are as follows: -B

First Security Bank of Utah, National Association  
79 South Main Street  
Salt Lake City, Utah 84111

Mercantile-Safe Deposit and Trust Company  
2 Hopkins Plaza  
Baltimore, Maryland 21203

The fourth document, Security Agreement and Trust Indenture Supplement No. 1, dated as of November 22, 1989, is a secondary document. The names and addresss of the parties to such document are as follows: -C

First Security Bank of Utah, National Association  
79 South Main Street  
Salt Lake City, Utah 84111

Mercantile-Safe Deposit and Trust Company  
2 Hopkins Plaza  
Baltimore, Maryland 21203

A description of the equipment covered by each of these documents is set forth in Appendix A attached hereto.

A short summary of the documents to appear in the index follows:

Equipment Lease Agreement, dated as of November 1, 1989, between First Security Bank of Utah, National Association, not in its individual capacity except as otherwise expressly provided therein but solely as trustee, as Owner Trustee and Burlington Northern Railroad Company, as Lessee.

Lease Supplement No. 1, dated as of November 22, 1989, between First Security Bank of Utah, National Association, not in its individual capacity except as otherwise expressly provided therein but solely as trustee, as Owner Trustee and Burlington Northern Railroad Company, as Lessee.

Security Agreement and Trust Indenture, dated as of November 1, 1989, between First Security Bank of Utah, National Association, not in its individual capacity except as otherwise expressly provided therein but solely as trustee, as Owner Trustee and Mercantile-Safe Deposit and Trust Company, as Indenture Trustee.

Security Agreement and Trust Indenture Supplement No. 1, dated as of November 22, 1989, between First Security Bank of Utah, National Association, not in its individual capacity except as otherwise expressly provided therein but solely as trustee, as Owner Trustee and Mercantile-Safe Deposit and Trust Company, as Indenture Trustee.

A filing fee of \$60.00 is enclosed. Please return one stamped original copy to the undersigned.

Very truly yours

THELEN, MARRIN, JOHNSON & BRIDGES



David P. Graybeal

Enclosures

RECORDATION NO

16621

FILED 11/22/89

NOV 22 1989 -11 35 AM

INTERSTATE COMMERCE COMMISSION

Wang: 1980g

SECURITY AGREEMENT AND TRUST INDENTURE

Dated as of November 1, 1989

Between

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,  
as Owner Trustee under each of  
BN Trust No. 89-1, BN Trust No. 89-2,  
BN Trust No. 89-3, BN Trust No. 89-4, and BN Trust No. 89-5

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity,  
except as expressly so stated herein,  
but solely as Indenture Trustee

Filed with the Interstate Commerce Commission  
Pursuant to 49 U.S.C. §11303  
On November \_\_, 1989, at \_\_\_\_\_.M.  
Recordation Number \_\_\_\_\_

# TABLE OF CONTENTS

(Not a part of the Agreement)

<u>Section</u>	<u>Heading</u>	<u>Page</u>
	PARTIES. . . . .	1
	RECITALS... . . . .	1
SECTION 1.	GRANT OF SECURITY.....	2
1.1	Equipment Collateral.....	2
1.2.	The Lease.....	2
1.3.	Assigned Agreements.....	3
1.4.	Duration of Security Interest.....	4
SECTION 2.	EXECUTION, PAYMENT, REGISTRATION, ETC. OF LOAN CERTIFICATES.....	4
2.1.	Execution of Loan Certificates; Principal Amount.....	4
2.2.	Payment of Loan Certificates.....	5
2.3.	Registered Loan Certificates; the Register.....	6
2.4.	Transfers and Exchanges of Loan Certificates; Lost or Mutilated Loan Certificates.....	7
2.5.	The New Loan Certificates.....	8
2.6.	Cancellation of Loan Certificates.....	9
2.7.	Indenture Trustee as Agent.....	9
2.8.	Ownership.....	9
SECTION 3.	COVENANTS AND WARRANTIES OF THE OWNER TRUSTEE.....	10
3.1.	Owner Trustee's Duties.....	10
3.2.	Warranty.....	10
3.3.	Further Assurances.....	10
3.4.	After-Acquired Property.....	10
3.5.	Recordation and Filing.....	11
3.6.	Actions with Respect to Collateral.....	11
3.7.	Power of Attorney in Respect of the Lease....	11
3.8.	Notice of Default.....	12
3.9.	Revised Schedules Prior to Adjustment of Rents and after Stipulated Loss Value, Termination Value or Early Purchase Option Payments.....	12
SECTION 4.	POSSESSION, USE AND RELEASE OF PROPERTY.....	12
4.1.	Possession of Collateral .....	12
4.2	Release of Property. ....	12
4.3.	Condemnation.....	13

<u>Section</u>	<u>Heading</u>	<u>Page</u>
4.4	Release of Collateral - Consent of Certificate Holders.. . . . .	13
4.5.	Protection of Purchaser..... . . . .	14
SECTION 5.	APPLICATION OF ASSIGNED RENTS AND CERTAIN OTHER MONEYS RECEIVED BY THE INDENTURE TRUSTEE.....	14
5.1.	Application of Rents and Other Payments.....	14
5.2.	Multiple Series; Multiple Loan Certificates.....	18
5.3.	Default.. . . . .	18
5.4	Distribution Withheld for the Owner Trustee.....	18
5.5.	Investment.....	18
5.6.	Manner of Payment..... . . . .	18
SECTION 6.	PREPAYMENT OF LOAN CERTIFICATES.....	19
6.1.	Prepayments.....	19
6.2.	Mandatory Prepayments.....	19
6.3	Optional Prepayments.....	20
6.4.	Notice of Prepayment; Partial Prepayments.....	20
SECTION 7.	DEFAULTS AND OTHER PROVISIONS.....	21
7.1.	Events of Default.....	21
7.2.	Indenture Trustee's Rights.....	23
7.3.	Certain Rights of the Owner Trustee.....	25
7.4.	Acceleration Clause.....	26
7.5.	Waiver by Owner Trustee.....	27
7.6.	Effect of Sale.....	27
7.7.	Application of Proceeds.....	27
7.8.	Discontinuance of Remedies.....	28
7.9.	Cumulative Remedies.....	28
SECTION 8.	THE INDENTURE TRUSTEE.....	29
8.1.	Duties of Indenture Trustee.....	29
8.2.	Indenture Trustee's Liability.....	29
8.3.	No Responsibility of Indenture Trustee for Recitals.....	32
8.4.	Certain Limitations on Indenture Trustee's Rights to Compensation and Indemnification.....	32
8.5.	Status of Moneys Received.....	33
8.6.	Resignation of Indenture Trustee.....	33
8.7.	Removal of Indenture Trustee.....	33
8.8.	Appointment of Successor Indenture Trustee.....	34
8.9.	Succession of Successor Indenture Trustee.....	34
8.10.	Eligibility of Indenture Trustee.....	35
8.11.	Successor Indenture Trustee by Merger.....	35
8.12.	Co-Trustees... . . . .	35

<u>Section</u>	<u>Heading</u>	<u>Page</u>
SECTION 9.	LIMITATIONS OF LIABILITY.. . . . .	36
SECTION 10.	[intentionally blank].... . . . .	36
SECTION 11.	SUPPLEMENTS; WAIVERS.....	37
11.1.	Supplemental Indentures Without Certificate Holder's Consent.....	37
11.2.	Supplements to Lease Without Certificate Holder's Consent.....	37
11.3.	Waivers and Consents by Certificate Holders; Supplemental Indentures with Certificate Holder's Consent.....	38
11.4.	Notice of Supplemental Indentures.....	39
11.5.	Opinion of Counsel Conclusive as to Supplemental Indentures.....	39
SECTION 12.	MISCELLANEOUS.....	39
12.1.	Successors and Assigns.....	39
12.2.	Severability.....	39
12.3.	Communications.....	40
12.4.	Release.....	40
12.5.	Business Day.....	41
12.6.	Governing Law.....	41
12.7.	Counterparts.....	41
12.8.	Headings.....	41
Signature Page	.....	42

ATTACHMENTS TO SECURITY AGREEMENT AND TRUST INDENTURE:

Schedule 1 - Amortization Schedules  
Exhibit A - Form of Loan Certificate  
Exhibit B - Form of Indenture Supplement

## SECURITY AGREEMENT AND TRUST INDENTURE

THIS SECURITY AGREEMENT AND TRUST INDENTURE dated as of November 1, 1989 (the "Indenture") is between First Security Bank of Utah, National Association, a national banking association, not in its individual capacity but solely in its capacity as trustee under each of BN Trust No. 89-1, BN Trust 89-2, BN Trust 89-3, BN Trust 89-4 and BN Trust 89-5 (the "Owner Trustee" in such capacity under each such Trust unless any reference relates to the Owner Trustee only with respect to one or more specific Trusts, in which case such reference shall be deemed to refer to the Owner Trustee in its capacity under such specific Trusts), and Mercantile-Safe Deposit and Trust Company, a Maryland trust company, not in its individual capacity, except as expressly stated herein, but solely as indenture trustee (the "Indenture Trustee"). The post office addresses of the Owner Trustee and the Indenture Trustee are set forth in Section 12.3.

### R E C I T A L S :

A. The capitalized terms used in this Indenture shall have the meanings specified in Schedule 1 to the Lease unless otherwise herein defined or the context hereof shall otherwise require.

B. The Owner Trustee and the Original Owner Participant have entered into five separate Trust Agreements, one each in respect of the five Trusts referred to in the preamble above. The Owner Trustee, the Indenture Trustee and the other parties thereto have entered into a Participation Agreement providing for the commitment of the Loan Participants to purchase on certain dates therein provided, the Secured Loan Certificates, the proceeds of which will be applied to finance a portion of the Equipment Cost of the Equipment to be purchased by the Owner Trustee and leased to Lessee pursuant to the Lease.

C. The Loan Certificates and all principal thereof and interest (and premium, if any) thereon and all additional amounts and other sums at any time due and owing or required to be paid to the Indenture Trustee or the Certificate Holders under the terms of the Loan Certificates, this Indenture or the Participation Agreement, and according to their tenor and effect, are hereinafter sometimes referred to as "indebtedness hereby secured".

D. All of the requirements of law relating to the transaction contemplated hereby have been fully complied with and all other acts and things necessary to make this Indenture a valid, binding and legal instrument for the security of the Loan Certificates have been done and performed.



SECTION 1. GRANT OF SECURITY.

The Owner Trustee, in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest and premium, if any, on the Loan Certificates according to their tenor and effect, and to secure the payment of all other indebtedness hereby secured and the performance and observance of all of the Owner Trustee's covenants and conditions contained in the Loan Certificates, in this Indenture and in the Participation Agreement, does hereby convey, warrant, mortgage, assign, pledge and grant unto the Indenture Trustee, its successors in trust and assigns for the ratable use and benefit of the holders of the Loan Certificates, a security interest in all and singular of the Owner Trustee's right, title and interest in and to the properties, rights, interests and privileges described in Sections 1.1, 1.2 and 1.3 hereof; excluding, however, the Excepted Rights in Collateral (all of which properties other than the Excepted Rights in Collateral, being hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral").

1.1. Equipment Collateral. Collateral includes the Equipment described in each Indenture Supplement executed and delivered on any Closing Date, the form of which is attached hereto as Exhibit B and made a part hereof, which constitutes the Equipment leased and delivered under that certain Equipment Lease Agreement dated as of November 1, 1989 (the "Lease") between the Owner Trustee, as lessor, and the Lessee, as lessee; together with (i) all Parts whether now owned or hereafter acquired, except such thereof as remain the property of the Lessee under the Lease, (ii) all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment, except such thereof as remain the property of the Lessee under the Lease, together with all the rents, issues, income and profits therefrom, and (iii) all proceeds of the Collateral, including, without limitation, insurance proceeds, and products of any of the foregoing.

1.2. The Lease. Collateral also includes all right, title, interest, claims and demands of the Owner Trustee as lessor in, to and under the Lease, including all extensions of the term of the Lease, together with all rights, powers, privileges, options and other benefits of the Owner Trustee as lessor under the Lease, including, without limitation:

(a) the immediate and continuing right to receive and collect all Rent, Stipulated Loss Value and Termination Value payments, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable or receivable by the Owner Trustee under the Lease pursuant thereto, except those sums reserved as Excepted Rights in Collateral;

(b) the right, but not to the exclusion of the Owner Trustee or Owner Participant (i) to receive from the Lessee, Certificates

and other documents and any information which the Lessee is required to give or furnish to the Lessor, and (ii) to inspect the Equipment and all records relating thereto;

(c) the right to make all waivers and agreements and to enter into any amendments relating to the Lease or any provision thereof, except with regard to the right of the Owner Trustee or the Owner Participant to receive those sums reserved as Excepted Rights in Collateral; provided, however, that so long as no Indenture Default or Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee may not make any waivers or enter into any amendments to the Lease, any Operative Agreement or any provision thereof without the consent of the Owner Trustee, which consent shall not be unreasonably withheld, and provided, further, that the Indenture Trustee shall not at any time amend any Operative Agreement or waive nonperformance of the Lessee thereunder without the prior written consent of the Owner Trustee in connection with (i) decreasing any payment obligation of the Lessee, (ii) extending any term, (iii) changing the periodicity of any payments, (iv) changing any maintenance provisions, (v) changing any provisions relating to the return of Equipment or the condition of Equipment, (vi) changing any indemnification obligations of Lessee or rights of the Owner Trustee or any Owner Participant or (vii) changing any sublease or assignment rights or obligation of the Lessee; and

(d) except as otherwise provided in Section 7.2, the right to take such action upon the occurrence of a Lease Default or a Lease Event of Default, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and all other things whatsoever which the Owner Trustee or any lessor is or may be entitled to do under the Lease, except such rights with respect to, and as are reserved to the Owner Trustee and the Owner Participant in the definition of, Excepted Rights in Collateral; it being the intent and purpose hereof that the assignment and transfer to the Indenture Trustee of said rights, powers, privileges, options and other benefits shall be effective and operative immediately and shall continue in full force and effect, and the Indenture Trustee shall have the right to collect and receive all Rent and Stipulated Loss Value and Termination Value payments and other sums for application in accordance with the provisions of Section 5 hereof at all times during the period from and after the date of this Indenture until the indebtedness hereby secured has been fully paid and discharged.

1.3. Assigned Agreements. All right, title, interest, claims and demands of the Owner Trustee in, to and under

(a) the Bills of Sale;

(b) the Assignment of Warranties; and

(c) any and all other contracts and agreements relating to the Equipment (including any sublease thereof) or any rights or

interests therein to which the Owner Trustee is now or may hereafter be a party,

together with all rights, powers, privileges, licenses, easements, options and other benefits of the Owner Trustee under each thereof, including, without limitation, the right to make all waivers and agreements (subject to Section 1.2(c)), to give and receive all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Owner Trustee is or may be entitled to do thereunder.

1.4. Duration of Security Interest. The Indenture Trustee, its successors in trust and assigns shall have and hold the Collateral forever; provided, always, however, that such security interest is granted upon the express condition that if the Owner Trustee shall pay or cause to be paid all the indebtedness hereby secured then these presents and the estate hereby granted and conveyed shall cease and this Indenture shall become null and void, and in such event the Indenture Trustee shall (upon the request of the Owner Trustee and at no cost to the Indenture Trustee) execute and deliver to the Owner Trustee such instrument or instruments as may be necessary or appropriate in order to make clear upon the public records the title of the Owner Trustee in and to the Collateral; otherwise this Indenture shall remain in full force and effect.

## SECTION 2. EXECUTION, PAYMENT, REGISTRATION, ETC. OF LOAN CERTIFICATES.

### 2.1. Execution of Loan Certificates; Principal Amount.

(a) The Loan Certificates will be issued in four Series, identified as Series A, Series B, Series C and Series D, and within each Series will be issued in respect of a particular Trust and shall be designated as such (e.g., Series A-1 denotes a Secured Loan Certificate, Series A issued with respect to BN Trust No. 89-1). Each Loan Certificate will (i) be dated the date of issue, (ii) bear interest from such date of issue at the rate per annum equal to 9.42% for the Series A Loan Certificates, 9.17% for the Series B Loan Certificates and Series C Loan Certificates, and 9.12% for the Series D Loan Certificates, (iii) be payable in one installment of interest only due on June 15, 1990 and (iv) be payable in semi-annual installments of principal and accrued interest in accordance with the amortization schedule for such Series set forth in Schedule 1 attached thereto. The Loan Certificates are to be substantially in the form attached hereto as Exhibit A. The term "Loan Certificates" as used herein shall include each Series A Loan Certificate, Series B Loan Certificate, Series C Loan Certificate and Series D Loan Certificate delivered pursuant to this Agreement or the Participation Agreement.

(b) The Loan Certificates shall be signed on behalf of the Owner Trustee for the Trust issuing the same by any Person who, at the date of the actual execution of such Loan Certificate, shall be a proper officer of the Owner Trustee. Only such Loan Certificates as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A hereto shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Indenture Trustee upon any Loan Certificate executed by the Owner Trustee shall be conclusive evidence, and the only evidence, that the Loan Certificate so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture. The authentication by the Indenture Trustee of any Loan Certificate issued hereunder shall not be construed as a representation or warranty by the Indenture Trustee as to the validity or security of this Indenture or of such Loan Certificate, and the Indenture Trustee shall in no respect be liable or answerable for the use made of such Loan Certificate or the proceeds thereof. The Indenture Trustee shall, upon presentation to it of Loan Certificates duly executed on behalf of the Owner Trustee, authenticate such Loan Certificates upon the written request of the Owner Trustee so to do and shall thereupon deliver such Loan Certificates to or upon the written order of the Owner Trustee signed by any person who, at the date of the actual execution of such order, shall be a proper officer of the Owner Trustee, and the Indenture Trustee shall be entitled to assume for all purposes that the signature or any such order is that of a proper officer of the Owner Trustee.

(c) The aggregate principal amount of the Series A Loan Certificates, the Series B Loan Certificates, the Series C Loan Certificates and the Series D Loan Certificates to be issued hereunder shall not exceed \$52,134,000.

## 2.2. Payment of Loan Certificates.

(a) The principal of, premium, if any, and interest on the Loan Certificates shall be payable at the principal office of the Indenture Trustee, in lawful money of the United States of America. Payment of principal and interest on the Loan Certificates shall be made only upon presentation of such Loan Certificates to the Indenture Trustee for notation thereon of the amount of such payment. Any payment or prepayment of amounts due on the Loan Certificates in accordance with the terms thereof and hereof which is due on a date which is not a Business Day shall be payable on the next succeeding Business Day.

(b) Notwithstanding the foregoing provisions of paragraph (a) of this Section 2.2, if any Loan Certificate is held by a Certificate Holder which is an institutional investor, the Indenture Trustee shall, if so requested in writing by such Certificate Holder, make payment of interest on such Loan Certificate and make payments or prepayments of the principal thereof, and any premium, by check, duly mailed, by first-class mail, postage prepaid, or delivered to such Certificate Holder at its address appearing on the Register without surrender or presentation of

such Loan Certificate and without any notation of such payment being made thereon, and such Certificate Holder (or Person for whom such Certificate Holder is a nominee) will, before selling, transferring or otherwise disposing of such Loan Certificate, present such Loan Certificate to the Indenture Trustee for transfer and notation as provided in Sections 2.4 and 2.5. Upon written notice from any Certificate Holder which is an institutional investor or its nominee given not less than thirty (30) days prior to the payment or prepayment of the Loan Certificates (and the Loan Participants shall be deemed to have given such notice), the Indenture Trustee will cause all payments and prepayments of the principal of, and interest and premium, if any, on the Loan Certificate held by such Certificate Holder or its nominee to be made to any bank in the continental United States as shall be specified in such notice by wire transfer of immediately available Federal Reserve funds to such bank, on each such date such payment or prepayment is due, provided that such bank has facilities for the receipt of a wire transfer. The Indenture Trustee will transmit any such wire transfer from its offices not later than 12:00 Noon, Baltimore, Maryland time, on each such date payment or prepayment is due provided available funds have been received by the Indenture Trustee prior to 10:00 A.M., Baltimore, Maryland time. All such notices or requests for payment by check or wire transfer and the Indenture Trustee's performance pursuant thereto shall be at the sole risk and expense of such Certificate Holder and without any liability whatsoever to the Indenture Trustee, including, but not limited to, the Indenture Trustee's reliance on the legitimacy, validity and authority of such request or notice (without any duty to undertake any investigation thereof).

(c) All payments required to be made by the Indenture Trustee under this Section 2.2 shall be made, in all cases, only to the extent good collected funds are received by the Indenture Trustee prior to the time any such payment is due and to the extent such amounts are payable to any such Certificate Holder in accordance with the Operative Agreements.

2.3. Registered Loan Certificates; the Register. The Loan Certificates shall be issuable as fully registered Loan Certificates in the form attached hereto as Exhibit A. The Indenture Trustee shall cause to be kept at the principal office of the Indenture Trustee a register with respect to each Trust for the registration and transfer of the Loan Certificates issued with respect thereto (each such register herein called a "Register"). The names and addresses of the holders of the Loan Certificates, the transfers or exchanges of the Loan Certificates and the names and addresses of the transferees of all Loan Certificates shall be registered in the applicable Register. The Register shall be maintained and transfers and exchanges of the Loan Certificates (as provided for in Section 2.4) effected in compliance with the requirements for registration-required obligations contained in Section 163(f) of the Code, or any successor provision, and this Section 2 shall be interpreted and applied consistently therewith.

2.4. Transfers and Exchanges of Loan Certificates, Lost or Mutilated Loan Certificates.

(a) The holder of any Loan Certificate may transfer such Loan Certificate upon the surrender thereof at the principal office of the Indenture Trustee, or upon notice to the Indenture Trustee as provided in Section 7 of the Participation Agreement. If such Certificate Holder has surrendered its Loan Certificate to the Indenture Trustee, thereupon, the Owner Trustee, in its capacity as Owner Trustee for the Trust for which the original Loan Certificate was issued, shall prepare and execute in the name of the transferee a new Loan Certificate or Loan Certificates of the same series as the Loan Certificate or Loan Certificates surrendered to the Indenture Trustee and in an aggregate principal amount equal to the original principal amount of the Loan Certificate so surrendered, and the Indenture Trustee shall (i) authenticate and deliver such new Loan Certificate or Loan Certificates to such transferee and (ii) register such transfer in the Register.

(b) All Loan Certificates presented or surrendered for transfer shall be accompanied (if so required by the Owner Trustee or by the Indenture Trustee) by a written instrument or instruments of assignment or transfer, in form satisfactory to the Indenture Trustee, duly executed by the holder or by its attorney duly authorized in writing. The Owner Trustee and the Indenture Trustee shall not be required to make a transfer or an exchange of any Loan Certificate for a period of ten (10) days preceding any payment date with respect thereto.

(c) No notarial seal shall be necessary for the transfer or exchange of any Loan Certificate pursuant to this Section 2.4, and the holder of any Loan Certificate issued as provided in this Section 2.4 shall be entitled to any and all rights and privileges granted under this Indenture to a holder of a Loan Certificate.

(d) In case any Loan Certificate shall become mutilated or be destroyed, lost or stolen, the Owner Trustee, in its capacity as Owner Trustee for the Trust for which the original Loan Certificate was issued, upon the written request of the holder thereof, shall prepare and execute and the Indenture Trustee shall authenticate and deliver a new Loan Certificate of the same series and in an aggregate principal amount equal to the original principal amount of the mutilated, destroyed, lost or stolen Loan Certificate in exchange and substitution for the mutilated Loan Certificate, or in lieu of and in substitution for the Loan Certificate so destroyed, lost or stolen. The applicant for a substitute Loan Certificate shall furnish to the Owner Trustee and to the Indenture Trustee such security or indemnity as may be required by them to save each of them harmless from all risks resulting from the authentication and delivery of the substitute Loan Certificate, and the applicant shall also furnish to the Owner Trustee and to the Indenture Trustee evidence to their satisfaction of the mutilation, destruction, loss or theft of the applicant's Loan Certificate and of the ownership thereof. In case any Loan Certificate which has matured or is about to mature shall become

mutilated or be destroyed, lost or stolen, the Owner Trustee may, instead of issuing a substitute Loan Certificate, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Loan Certificate) if the applicant for such payment shall furnish to the Owner Trustee and to the Indenture Trustee such security or indemnity as they may require to save them harmless, and shall provide evidence to the satisfaction of the Owner Trustee and the Indenture Trustee of the mutilation, destruction, loss or theft of such Loan Certificate and the ownership thereof. If an institutional Certificate Holder or its nominee is the owner of any mutilated, destroyed, lost or stolen Loan Certificate, then the affidavit of its President, any Vice President, Treasurer or any Assistant Treasurer in form reasonably satisfactory to the Owner Trustee and the Indenture Trustee setting forth the fact of destruction, loss or theft and such Certificate Holder's ownership of the Loan Certificate at the time of such mutilation, destruction, loss or theft shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Loan Certificate other than the written agreement of such Certificate Holder, in form reasonably satisfactory to the Owner Trustee and the Indenture Trustee, to indemnify the Owner Trustee and the Indenture Trustee from all risks resulting from the authentication and delivery of the substitute Loan Certificate.

#### 2.5. The New Loan Certificates.

(a) Each new Loan Certificate (herein, in this Section 2.5, called a "New Loan Certificate") issued pursuant to Section 2.4(a) or (d) in exchange for or in substitution or in lieu of an outstanding Loan Certificate (herein, in this Section 2.5, called an "Old Loan Certificate") shall be dated the date of such Old Loan Certificate. The Indenture Trustee shall mark on each New Loan Certificate (i) the date to which principal and interest have been paid on such Old Loan Certificate, and (ii) all payments and prepayments of principal previously made on such Old Loan Certificate which are allocable to such New Loan Certificate. Interest shall be deemed to have been paid on such New Loan Certificate to the date on which interest shall have been paid on such Old Loan Certificate, and all payments and prepayments of principal marked on such New Loan Certificate, as provided in clause (ii) above, shall be deemed to have been made thereon.

(b) Upon the issuance of a New Loan Certificate pursuant to Section 2.4(a) or (d), the Owner Trustee and the Indenture Trustee may require the payment from the Lessee pursuant to Section 2.6 of the Participation Agreement of a sum to reimburse it for, or to provide it with funds for, the payment of any tax or other governmental charge or any other charges and expenses connected therewith which are paid or payable by the Owner Trustee or the Indenture Trustee.

(c) All New Loan Certificates issued pursuant to Section 2.4(a) or (d) in exchange for or in substitution or in lieu of Old Loan Certificates shall be valid obligations of the Owner Trustee evidencing

the same debt as the Old Loan Certificates and shall be entitled to the benefits and security of this Indenture to the same extent as the Old Loan Certificates.

(d) Upon the issuance of any Loan Certificate pursuant to this Indenture, the Indenture Trustee shall deliver to the holder thereof an amortization schedule with respect to such Loan Certificate setting forth a revised schedule of payments of principal and accrued interest payments to be made on such Loan Certificate after the date of issuance thereof and the unpaid principal balance of such Loan Certificate after each such payment.

2.6. Cancellation of Loan Certificates. All Loan Certificates surrendered for the purpose of payment, redemption, transfer or exchange shall be delivered to the Indenture Trustee for cancellation or, if surrendered to the Indenture Trustee, shall be cancelled by it, and no Loan Certificates shall be issued in lieu thereof except as expressly required or permitted by any of the provisions of this Indenture. At the request of the Owner Trustee, the Indenture Trustee shall deliver a certificate to the Owner Trustee specifying any cancellation of Loan Certificates which has been made. All such cancelled Loan Certificates shall be held by the Indenture Trustee until this Indenture shall have been discharged, at which time the Indenture Trustee shall either deliver such cancelled Loan Certificates in a manner necessary to effect the discharge and release of this Indenture or, if no such delivery is necessary, such Loan Certificates shall be delivered to or disposed of as directed by the Owner Trustee.

2.7. Indenture Trustee as Agent. The Indenture Trustee is hereby appointed the agent of the Owner Trustee for the payment, registration, transfer and exchange of Loan Certificates. Subject to the provisions of Section 2.2, Loan Certificates may be presented for payment at, and notices or demands with respect to the Loan Certificates or this Indenture may be served or made at, the principal corporate trust office of the Indenture Trustee.

2.8. Ownership. The Person in whose name any Loan Certificate shall be registered shall be deemed and treated as the owner thereof for all purposes of this Indenture and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary. Payment of or on account of the principal of, premium, if any, and interest on such Loan Certificate shall be made only to or upon the order in writing of such registered owner. For the purpose of any request, direction or consent hereunder, the Owner Trustee and the Indenture Trustee may deem and treat the registered owner of any Loan Certificate as the owner and holder thereof without production of such Loan Certificate.



### SECTION 3. COVENANTS AND WARRANTIES OF THE OWNER TRUSTEE.

The Owner Trustee covenants, warrants and agrees for the benefit of the Indenture Trustee and the holders of the Loan Certificates as follows.

3.1 Owner Trustee's Duties. The Owner Trustee covenants and agrees well and truly to perform, abide by and be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements set forth in the Participation Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Participation Agreement were fully set out in an amendment or supplement to this Indenture. The Owner Trustee undertakes to perform only such duties as are expressly and specifically set forth herein and in the other Operative Agreements (as defined in the Participation Agreement) and no implied obligations or covenants shall be read into this Indenture or any other Operative Agreements against the Owner Trustee.

3.2. Warranty. The Owner Trustee represents and warrants that there is no financing statement or other filed or recorded instrument in which the Owner Trustee is named and which the Owner Trustee has signed, as debtor or mortgagor, now on file in any public office covering any of the Collateral excepting the financing statements or other instruments filed or to be filed in respect of and for the security interest provided for herein.

3.3. Further Assurances. The Owner Trustee will, upon the request of and at no expense to the Indenture Trustee, (a) execute an Indenture Supplement in the form of Exhibit B attached hereto specifically identifying the Equipment to be acquired by the Owner Trustee on such Closing Date, and (b) do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired. Without limiting the foregoing but in furtherance of the security interest herein granted in the rents and other sums due and to become due under the Lease, the Owner Trustee covenants and agrees that it will, pursuant to Section 18 of the Lease, notify the Lessee of the assignment hereunder and direct the Lessee to make all payments of such rents and other sums due and to become due under the Lease directly to the Indenture Trustee or as the Indenture Trustee may direct in writing.

3.4 After-Acquired Property. Any and all property described or referred to in the granting clauses hereof which is hereafter acquired shall ipso facto, and without any further conveyance, assignment or act on the part of the Owner Trustee or the Indenture Trustee, become and be

subject to the security interest herein granted as fully and completely as though specifically described herein, but nothing in this Section 3.4 contained shall be deemed to modify or change the obligation of the Owner Trustee under Section 3.3 hereof

3.5. Recordation and Filing. The Owner Trustee will cooperate fully with the Lessee and/or the Indenture Trustee in any effort to cause this Indenture and all supplements hereto, the Lease and all supplements thereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Indenture Trustee in such manner and in such place as may be requested in writing by the Indenture Trustee in order to fully preserve and protect the rights of the Indenture Trustee hereunder

3.6. Actions with Respect to Collateral. The Owner Trustee will not:

(a) declare a default or exercise the remedies of the Lessor under, or terminate, modify or accept a surrender of, or offer or agree to any termination, modification or surrender of, the Lease (except as otherwise expressly provided herein), or, except as permitted under the Lease, by affirmative act consent to the creation or existence of any security interest or other Lien to secure the payment of indebtedness upon the leasehold estate created by the Lease or any part thereof;

(b) receive or collect any payment of Rent, Stipulated Loss Value or Termination Value under the Lease prior to the date of payment thereof provided for by the Lease or assign, transfer or hypothecate (other than to the Indenture Trustee hereunder) any payment of Rent, Stipulated Loss Value or Termination Value which is then due or to accrue in the future under the Lease in respect of the Equipment; or

(c) except as expressly permitted by the Operative Agreements, sell, mortgage, transfer, assign or hypothecate (other than to the Indenture Trustee hereunder) its interest in the Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment.

3.7. Power of Attorney in Respect of the Lease. Except with respect to Excepted Rights in Collateral, the Owner Trustee does hereby irrevocably constitute and appoint the Indenture Trustee its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Section 1 hereof with full power to settle, adjust or compromise any claim thereunder as fully as the Owner Trustee could itself do, to accept any offer of the Seller to purchase the Equipment as provided in the Participation Agreement and upon such purchase to execute and deliver in the name of and on behalf of the Owner

Trustee, in its capacity for the Trust which holds such Equipment, an appropriate bill of sale and other instruments of transfer relating to the Equipment when purchased by the Seller in accordance with the Participation Agreement, and to endorse the name of the Owner Trustee for such Trust on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Owner Trustee or otherwise, which the Indenture Trustee may deem necessary or appropriate to protect and preserve the right, title and interest of the Indenture Trustee in and to such rents and other sums and the security intended to be afforded hereby.

3.8. Notice of Default. The Owner Trustee further covenants and agrees that it will give the Indenture Trustee and each Certificateholder prompt written notice of any event or condition constituting a Lease Event of Default if an officer or an employee in the Corporate Trust Department of the Owner Trustee has actual knowledge of such event or condition.

3.9. Revised Schedules Prior to Adjustment of Rents and after Stipulated Loss Value, Termination Value or Early Purchase Option Payments. At least ten (10) days prior to any adjustments of the Basic Rent, Stipulated Loss Value and Termination Value pursuant to Section 2.7 of the Participation Agreement, the Owner Trustee shall furnish to each Certificate Holder and to the Indenture Trustee revised schedules of the Basic Rent, Stipulated Loss Value and Termination Value, as so adjusted. Promptly following any settlement of Stipulated Loss Value pursuant to Section 11 of the Lease, Termination Value pursuant to Section 12 of the Lease, or the early purchase option pursuant to Section 10 of the Participation Agreement, the Owner Trustee shall furnish to each Certificate Holder and to the Indenture Trustee revised schedules of the Basic Rent.

#### SECTION 4. POSSESSION, USE AND RELEASE OF PROPERTY.

4.1. Possession of Collateral. While the Owner Trustee is not in default hereunder, it shall be permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto, provided, always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Indenture. It is expressly understood that the use and possession of the Equipment by the Lessee under and subject to the Lease shall not constitute a violation of this Section 4.1.

#### 4.2. Release of Property.

(a) So long as no Lease Event of Default has occurred and is continuing to the knowledge of the Indenture Trustee, the Indenture Trustee shall execute a release in respect of any Unit designated by the Lessee for settlement of Stipulated Loss Value pursuant to Section 11 of

the Lease or Termination Value pursuant to Section 12 of the Lease or designated by the Seller for settlement of the early purchase option pursuant to Section 10 of the Participation Agreement, upon receipt from the Lessee (or the Seller in the case of the early purchase option) of written notice designating the Unit in respect of which the Lease will terminate and the receipt from the Lessee or the Seller of all sums payable for such Item of Equipment in compliance with Section 11 or Section 12 of the Lease or Section 10 of the Participation Agreement, as the case may be. Any such written notice from the Lessee or the Seller shall be accompanied by an Officer's Certificate of the Lessee or the Seller, as the case may be, setting forth the basis for such request and stating that the Lessee has complied with the applicable provisions of the Lease or that the Seller has complied with the applicable provisions of the Participation Agreement, as the case may be, together with such additional evidence of such compliance as the Indenture Trustee shall request. The Indenture Trustee agrees to execute such instruments as the Owner Trustee shall reasonably request to evidence such release and consents to all appropriate filings to confirm such release of public record.

(b) Provided that no Indenture Default or Indenture Event of Default shall have occurred and be continuing, upon the payment in full of any series of Loan Certificates, the lien of this Indenture shall be automatically released in respect of those Units of the Group of Equipment corresponding to and financed by such Series of Loan Certificates and the Indenture Trustee shall execute such instruments as the Owner Trustee shall reasonably request to evidence such release and consents to all appropriate filings to confirm such release of public record.

4.3. Condemnation. The Owner Trustee, immediately upon obtaining actual knowledge of the institution of any proceedings for the condemnation of the Collateral or any portion thereof, which condemnation proceedings, if successful, would reasonably be likely to result in an Event of Loss, shall notify the Indenture Trustee of the pendency of such proceedings. The Indenture Trustee may participate in any such proceedings, and the Owner Trustee from time to time will deliver or cause to be delivered to the Indenture Trustee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Owner Trustee or assigned to the Owner Trustee by the Lessee under the Lease shall be paid to the Indenture Trustee, and such award or compensation shall be retained by the Indenture Trustee as part of the Collateral and applied in accordance with Section 5. The Indenture Trustee shall be under no obligation to question the amount of the award or compensation and the Indenture Trustee may accept any such award or compensation. In any such condemnation proceedings, the Indenture Trustee may be represented by counsel.

4.4. Release of Collateral - Consent of Certificate-holders. In addition to any release pursuant to Section 4.2, the Owner Trustee may

sell or otherwise dispose of all or any part of the Collateral then subject to the Lien of this Indenture, and the Indenture Trustee shall release the same from the Lien and security interest hereof, to the extent and on the terms and upon compliance with the conditions provided for in any written consent given thereto at any time or from time to time by a Majority of the Certificate Holders.

4.5. Protection of Purchaser No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Indenture Trustee to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the Collateral be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

SECTION 5. APPLICATION OF ASSIGNED RENTS AND CERTAIN OTHER MONEYS RECEIVED BY THE INDENTURE TRUSTEE.

5.1. Application of Rents and Other Payments. As more fully set forth in Section 1.2 hereof, the Owner Trustee has hereby granted to the Indenture Trustee a security interest in Rents, issues, profits, income, insurance proceeds and other sums due and to become due under the Lease in respect of the Equipment as security for the Loan Certificates. So long as no Indenture Default or Indenture Event of Default has occurred and is continuing to the actual knowledge of a Responsible Officer of the Indenture Trustee:

(a) Basic Rent. The amounts from time to time received by the Indenture Trustee which constitute payment by the Lessee of installments of Basic Rent under the Lease shall be applied first, to the payment of the installments of principal and interest (and in each case first to interest and then to principal) on the Loan Certificates which have become due and payable or will become due and payable on or before the due date of such installment of Basic Rent which is received by the Indenture Trustee, and second, the balance, if any, of such amounts shall be paid to or upon the order of the Owner Trustee on the date of payment of the installment as provided in clause first above;

(b) Supplemental Rent. The amount, if any, from time to time received by the Indenture Trustee which constitutes payment of Supplemental Rent pursuant to Section 2.1(c) of the Lease (other than Termination Value and Stipulated Loss Value payments) shall be paid to or upon the order of the Owner Trustee, or to such other party which is to receive the same pursuant to the terms of the Lease;

(c) Stipulated Loss Value. The amounts from time to time received by the Indenture Trustee which constitute settlement by the Lessee of the Stipulated Loss Value for any Unit pursuant to Section 11 of the Lease shall be applied by the Indenture Trustee as follows:

(i) First, to the payment of an amount, if any, equal to the accrued and unpaid interest on that portion of the Loan Certificates to be prepaid pursuant to the following subparagraph,

(ii) Second, an amount equal to the Loan Value of the Unit for which settlement is then being made shall be applied to the prepayment of the Loan Certificates of the Series issued in respect of Units of the same Group and held in the same Trust as such Unit, so that each of the remaining installments of each such Loan Certificate shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of all such Loan Certificates immediately prior to the prepayment; and

(iii) Third, the balance, if any, of such amounts held by the Indenture Trustee after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be released to or upon the order of the Owner Trustee on the date of payment of the amounts provided in the preceding clauses (i) and (ii).

For purposes of this Indenture and the other Operative Agreements, the "Loan Value" in respect of any Unit as of any Stipulated Loss Value payment date, Termination Date or early purchase payment date pursuant to Section 10 of the Participation Agreement, as applicable, shall be an amount equal to the product of (A) a fraction, the numerator of which is an amount equal to the Equipment Cost of such Unit for which settlement is then being made and the denominator of which is the Total Equipment Cost of all Units of that Group of Equipment owned by that Trust of which such Unit is a part and which are then subject to the Lease, times (B) the unpaid principal amount of the Loan Certificates of such Trust of the applicable series immediately prior to the prepayment provided for in this Section 4.1(c), Section 4.1(d) or Section 4.1(e), as the case may be (after giving effect to all payments of installments of principal made or to be made on the date of prepayment provided for in this Section 4.1(c), Section 4.1(d) or Section 4.1(e), as the case may be).

(d) Termination Value. The amounts from time to time received by the Indenture Trustee which constitute settlement by the Lessee of the Termination Value for any Unit pursuant to Section 12 of the Lease shall be applied by the Indenture Trustee as follows:

(i) First, to the payment of an amount, if any, equal to the accrued and unpaid interest and Make-Whole Amount on that portion of the Loan Certificates to be prepaid pursuant to the following subparagraph; provided, however, no Make-Whole Amount shall be payable hereunder if the date of settlement for such Termination Value shall take place on or after the average life to maturity of such Loan

Certificates from the original date of issuance but after taking into effect any adjustments pursuant to Section 2.7 of the Participation Agreement;

(ii) Second, an amount equal to the Loan Value of the Unit for which settlement is then being made shall be applied to the prepayment of the Loan Certificates of the Series issued in respect of Units of the same Group and held in the same Trust as such Unit, so that each of the remaining installments of each such Loan Certificate shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of all such Loan Certificates immediately prior to the prepayment; and

(iii) Third, the balance, if any, of such amounts held by the Indenture Trustee after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be released to or upon the order of the Owner Trustee on the date of payment of the amounts provided in the preceding clauses (i) and (ii).

(e) Early Purchase Option. The amounts from time to time received by the Indenture Trustee which constitute payment by the Seller of the amount due upon exercise of the early purchase option for any Unit pursuant to Section 10 of the Participation Agreement shall be applied by the Indenture Trustee as follows:

(i) First, to the payment of an amount, if any, equal to the accrued and unpaid interest on that portion of the Loan Certificates to be prepaid pursuant to the following subparagraphs;

(ii) Second, an amount equal to the Loan Value of the Unit for which settlement is then being made shall be applied to the prepayment of the Loan Certificates of the Series issued in respect of Units of the same Group and held in the same Trust as such Unit, so that each of the remaining installments of each such Loan Certificate shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of all such Loan Certificates immediately prior to the prepayment; and

(iii) Third, the balance, if any, of such amounts held by the Indenture Trustee after making the applications provided for by the preceding subparagraphs (i) and (ii) shall be released to or upon the order of the Owner Trustee on the date of payment of the amounts provided in the preceding clauses (i) and (ii).

(f) Insurance Proceeds. The amounts received by the Indenture Trustee from time to time which constitute proceeds of property

or casualty insurance maintained by the Lessee on the Equipment, shall be held by the Indenture Trustee as a part of the Collateral and shall be applied by the Indenture Trustee from time to time to any one or more of the following purposes:

(i) So long as no Lease Default or Lease Event of Default has occurred and is continuing to the actual knowledge of a Responsible Officer of the Indenture Trustee, the proceeds of such insurance shall, if the Unit is to be repaired or restored, be released to the Owner Trustee with respect to the Trust to which the Unit belongs to pay to the Lessee the full amount of such proceeds and any net interest earned thereon pursuant to any investment pursuant to Section 5.5 within thirty (30) days following receipt by the Indenture Trustee of a written application signed by the Lessee for payment accompanied by an Officer's Certificate of the Lessee stating that (A) the Lessee has complied with the applicable provision of the Lease, (B) no Lease Default or Lease Event of Default is outstanding, and (C) any damage to such Unit in respect of which such proceeds were paid has been fully repaired or restored, such Officer's Certificate to be accompanied by satisfactory evidence of such repair or restoration; and

(ii) If the insurance proceeds shall not have been released to the Owner Trustee pursuant to the preceding paragraph (i) within 180 days from the receipt thereof by the Indenture Trustee, or if within such period the Lessee shall have notified the Indenture Trustee in writing that the Lease is to be terminated in respect of such Unit in accordance with the provisions of Section 11 of the Lease then so long as no Indenture Event of Default has occurred and is continuing to the knowledge of the Indenture Trustee, the insurance proceeds shall be applied by the Indenture Trustee as follows:

(A) First, to the prepayment of the applicable Loan Certificates, all in the manner and to the extent provided for by Section 5.1(c) hereof; and

(B) Second, the balance, if any, of such insurance proceeds held by the Indenture Trustee after making the applications provided for by the preceding subparagraph (A) shall be released to or upon the order of the Owner Trustee for the Trust to which such Unit belonged on the date of such prepayment of the applicable Loan Certificates.

(g) Condemnation Awards. So long as no Lease Default or Lease Event of Default has occurred or is continuing, any amounts received by or payable to the Indenture Trustee from time to time which constitute the award, compensation or damages payable for the condemnation or taking of all or any part of the Equipment for any public or quasi-public use (less the actual costs, fees and expenses incurred in



the collection thereof) shall be released to or upon the order of the Owner Trustee or the Lessee, as their interests may appear, if such condemnation or taking does not constitute an Event of Loss and otherwise shall be applied in accordance with Section 5.1 (c)

5.2. Multiple Series; Multiple Loan Certificates. If more than one series of Loan Certificates are outstanding at the time any application of moneys described in Section 5.1 is made, such application shall be made on all outstanding Loan Certificates of that series of Loan Certificates the proceeds of which were used to purchase the Unit or Group of Equipment with respect to which such amounts are received. If more than one Loan Certificate of a particular series are outstanding at the time such application is made, such application shall be made on all outstanding Loan Certificates of such series ratably in accordance with the aggregate principal amount remaining unpaid thereon.

5.3. Default. If an Indenture Event of Default has occurred and is continuing to the actual knowledge of a Responsible Officer of the Indenture Trustee, all amounts received by the Indenture Trustee pursuant to Section 1 hereof shall be applied in the manner provided for in Section 7 in respect of proceeds and avails of the Collateral, subject to Section 5.4 below.

5.4. Distributions Withheld from the Owner Trustee. Anything herein to the contrary notwithstanding, after an Indenture Event of Default, all payments which, but for the provisions of this Section, would otherwise be distributable to the Owner Trustee shall be held by the Indenture Trustee as part of the Indenture Estate, and may be distributed in accordance with Section 7 hereof; provided, however that (a) if such Indenture Event of Default shall cease to be continuing prior to the time such amounts may be distributed pursuant to Section 7 hereof or (b) if such amounts shall have been retained by the Indenture Trustee for more than six months and the Indenture Trustee shall neither (i) have declared the unpaid principal amount of all Loan Certificates to be immediately due and payable pursuant to Section 7.2(a) hereof nor (ii) have commenced the exercise of remedies under the Lease, such amounts shall be distributable as elsewhere in this Section 5 provided.

5.5. Investment. Any such payments held by the Indenture Trustee for more than five days and not distributed pursuant to this Section 5 shall be invested by the Indenture Trustee in any Permitted Investment in the case of payments under Section 5.1(f) or (g) as the Lessee may direct and in all other cases as the Owner Participant may direct.

5.6. Manner of Payments. The Indenture Trustee shall make all payments under this Section 5 to the Certificate Holders in the manner prescribed by Sections 2.2(b) hereof and to the Owner Trustee and the Owner Participants by wire transfer of immediately available Federal Reserve funds to the bank so designated for credit to the account and marked for attention as so designated, or in such other manner or to such

other address in the United States as may be designated by such party in a written notice to the Indenture Trustee pursuant to Section 2 2(b). The Indenture Trustee shall effect each such transfer from the office of the Indenture Trustee not later than 2 00 P.M., Baltimore, Maryland time, on each date on which any payment is due, provided sufficient funds therefor have been received by the Indenture Trustee in cash or in solvent credits acceptable to it prior to Noon, Baltimore, Maryland time. In the event that by reason of its negligence Mercantile-Safe Deposit and Trust Company does not transmit any such payment in immediately available funds on such date (or, if such date is not a Business Day, on the next succeeding Business Day), Mercantile-Safe Deposit and Trust Company shall pay out of its own funds and not out of any Trust Estate interest on such payment or prepayment at the applicable Coupon Rate.

#### SECTION 6. PREPAYMENT OF LOAN CERTIFICATES.

6.1. Prepayments. Neither any prepayment of any Loan Certificate nor any purchase by the Owner Trustee of any Loan Certificate may be made except to the extent and in the manner expressly permitted by this Indenture. Every prepayment of Loan Certificates required to be made pursuant to Section 5 and any prepayment permitted to be made under Section 7 shall be made in accordance with the provisions of this Section 6.

#### 6.2. Mandatory Prepayments.

(a) Early Termination Pursuant to Section 11 of the Lease. In the event of a termination of the Lease by the Lessee pursuant to the provisions of Section 11 of the Lease with respect to any Unit, on the date of such termination the Owner Trustee shall prepay and apply, and there shall become due and payable, a principal amount of the Loan Certificates of the series and the Trust to which such Unit belongs equal to the Loan Value of the Unit with respect to which the Lease is being terminated, and all accrued and unpaid interest thereon, but without premium.

(b) Early Termination pursuant to Section 12 of the Lease. In the event of a termination of the Lease by the Lessee pursuant to the provisions of Section 12 of the Lease with respect to any Unit, on the date of such termination the Owner Trustee shall prepay and apply, and there shall become due and payable, a principal amount of the Loan Certificates of the series and the Trust to which such Unit belongs equal to the Loan Value of the Unit with respect to which the Lease is being terminated, and all accrued and unpaid interest thereon, together with an amount equal to the applicable Make-Whole Amount; provided, however, no Make-Whole Amount shall be payable hereunder if the date of settlement for such Termination Value shall take place on or after the average life to maturity of such Loan Certificates.

(c) Early Termination pursuant to Section 10 of the Participation Agreement. In the event of a termination of the Lease by the Lessee upon demand by the Seller in connection with the exercise by the Seller of its purchase option pursuant to the provisions of Section 10 of the Participation Agreement with respect to any Unit and the Seller shall not have exercised its option to assume the indebtedness evidenced by the applicable Loan Certificates pursuant to Section 10(d) of the Participation Agreement, on the date of such termination the Owner Trustee shall prepay and apply, and there shall become due and payable, a principal amount of the Loan Certificates of the series and the Trust to which such Unit belongs equal to the Loan Value of the Unit with respect to which the Lease is being terminated, and all accrued and unpaid interest thereon.

6.3. Optional Prepayments. Upon compliance with Section 6.4, in addition to the prepayments required by Section 6.2, the Owner Trustee shall have the privilege, on any Rent Payment Date occurring on or after June 15, 1995, of prepaying, with respect to the Series A Notes, the Series B Notes, the Series C Notes or the Series D Notes, or any or all such series, in whole or in part (but if in part in units of \$100,000 or an integral multiple of \$10,000 in excess thereof), by payment of the principal amount of such series being so prepaid and all accrued and unpaid interest thereon to the date of such prepayment, together in each case with a premium in an amount equal to the Make-Whole Amount with respect to such series being so prepaid; provided, however, no Make-Whole Amount shall be payable hereunder if the date of settlement for such Termination Value shall take place on or after the average life to maturity of such Loan Certificates.

6.4. Notice of Prepayment; Partial Prepayments.

(a) Notice of Prepayment. In the case of any prepayment which will discharge all or a portion of the indebtedness of the Owner Trustee evidenced by the Loan Certificates (except if as a result of an Event of Loss), notice thereof in writing to the holders of the Loan Certificates to be so paid shall be sent by the Indenture Trustee as agent and attorney-in-fact of the Owner Trustee in the manner set forth in Section 11.3, to the holder of each Loan Certificate to be paid, at least 30 and not more than 60 days prior to the date fixed for payment or such later date as the Indenture Trustee shall have received notice of such prepayment. Such notice shall specify the date fixed for payment, the provision hereof under which such payment is being effected, and on the date fixed for payment there will become due and payable upon each Loan Certificate or portion thereof so to be paid at the place where the principal of the Loan Certificates to be paid is payable, the specified amount of principal thereof, together with the accrued interest to such date, with such premium (including the method used in determining such premium), if any, as is payable thereon.

(b) Allocation of Partial Prepayments. In the event of any partial prepayment of any series of Loan Certificates, the aggregate

principal amount of such Loan Certificates of such series to be prepaid shall be prorated by the Indenture Trustee among the holders thereof in proportion to the unpaid principal amount of such Loan Certificates of such series held by them, and the Indenture Trustee shall designate the portion of such loan certificates of such series of such holder to be prepaid.

(c) Deposit of Prepayment Funds. On or prior to the date fixed for any prepayment of any Loan Certificates, the moneys required for such payment shall be deposited with the Indenture Trustee by the Owner Trustee.

## SECTION 7. DEFAULTS AND OTHER PROVISIONS.

7.1. Events of Default. The term "Indenture Event of Default" for all purposes of this Indenture shall mean one or more of the following:

(a) Default in payment of an installment of the principal of, premium, if any, or interest on, any Loan Certificate when and as the same shall become due and payable, whether at the due date thereof or at the date fixed for prepayment or by acceleration or otherwise, and such default shall continue unremedied for five (5) Business Days after receipt by the Owner Trustee of written notice thereof from the Indenture Trustee (provided that a failure to make any such payment resulting from any tax withholding by the Indenture Trustee in respect of any payment to a Certificate Holder shall not constitute a default hereunder);

(b) A Lease Event of Default shall have occurred and be continuing;

(c) Default on the part of the Owner Trustee or the Owner Participant in the due observance or performance of any covenant or agreement to be observed or performed by the Owner Trustee or the Owner Participant under the Loan Certificates, this Indenture or the Participation Agreement, and such default shall continue unremedied for thirty (30) days after written notice from the Indenture Trustee to the Owner Trustee or the Owner Participant, as the case may be, specifying the default and demanding the same to be remedied; provided, however, no Indenture Event of Default shall occur under this paragraph (c) if (i) the Owner Trustee or the Owner Participant, as the case may be, is diligently attempting to cure such default, (ii) such default is capable of being cured but cannot be cured within thirty (30) days and (iii) such default does not impair in any material respect the security interest of the Indenture Trustee hereunder;

(d) Any material representation or warranty on the part of the Owner Trustee or the Owner Participant made herein or in the Participation Agreement or in any report, certificate, financial or other statement furnished by the Owner Trustee or the Owner Participant in connection with this Indenture, the Lease or the Participation Agreement, or the transactions contemplated therein, shall prove to have been false or misleading in any material respect when made and shall continue to be material and unremedied for a period of thirty (30) days after written notice thereof from the Indenture Trustee to the Owner Trustee or the Owner Participant, as the case may be; provided, however, that the continuation of such a default for longer than thirty (30) days after such written notice shall not constitute an Indenture Event of Default if (i) the Owner Trustee or the Owner Participant, as the case may be, is diligently pursuing the cure of such default, (ii) such default is capable of being cured but cannot be cured within thirty (30) days and (iii) such default does not impair in any material respect the security interest of the Indenture Trustee hereunder;

(e) Any claim, lien or charge (other than Permitted Liens and liens, charges and encumbrances which the Lessee is obligated to discharge under Section 8 of the Lease) shall be asserted against or levied or imposed upon the Equipment, and such claim, lien or charge shall not be discharged or removed within thirty (30) days after the same shall have been asserted, levied or imposed;

(f) The Owner Trustee on behalf of any Trust (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect such Trust or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Trust or any substantial part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against any Trust, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall fail generally to pay its debts as they become due, or (v) shall take any corporate action to authorize any of the foregoing; or

(g) An involuntary case or other proceeding shall be commenced against the Owner Trustee on behalf of any Trust or against any Trust seeking liquidation, reorganization or other relief with respect to such Trust or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Trust or any substantial part of its property, and such involuntary case

or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days.

7 2. Indenture Trustee's Rights. The Owner Trustee agrees that when any Indenture Event of Default has occurred and is continuing, the Indenture Trustee shall have the rights, options, duties and remedies of a secured party, and the Owner Trustee shall have the rights and duties of a debtor, under the Uniform Commercial Code of New York, and without limiting the foregoing, the Indenture Trustee may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute.

(a) The Indenture Trustee may, and upon the written request of the holders of at least 25% in principal amount of the Loan Certificates then outstanding shall, by notice in writing to the Owner Trustee, declare the entire unpaid balance of the Loan Certificates to be immediately due and payable, and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable;

(b) Subject always to the existing rights, if any, of the Lessee under the Lease, the Indenture Trustee personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Owner Trustee, with or without notice, demand, process of law or other legal proceeding, if this can be done without breach of the peace, and search for, take possession of, remove, keep and store the same, or use and operate or lease the same until sold, and to collect and receive all earnings, revenues, rents, issues, proceeds and income of the Collateral and every part thereof, to make alterations, improvements and additions thereon or remove and dispose of any portion of the Collateral and to otherwise exercise any and all of the rights and powers of the Owner Trustee in respect thereof;

(c) Subject always to the existing rights, if any, of the Lessee under the Lease, the Indenture Trustee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of any public or private sale by registered mail to the Owner Trustee and the Lessee at least ten (10) days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of the Collateral, or any part thereof, at public auction to the highest bidder or at private sale or sales conducted in a commercially reasonable manner, in one lot as an entirety or in separate lots, and either for cash or on credit and on

such terms as the Indenture Trustee may determine, and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice, and the Indenture Trustee or the holder or holders of the Loan Certificates, or of any interest therein, or the Owner Trustee may bid and become the purchaser at any such sale;

(d) Subject always to the existing rights of the Lessee under the Lease, if any, the Indenture Trustee may proceed to protect and enforce this Indenture and the Loan Certificates by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted; or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, or subject to the provisions of Section 9 hereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other proper, legal or equitable remedy available under applicable law; and

(e) Subject always to the existing rights of the Lessee under the Lease and the proviso to Section 1.2(b), if any, the Indenture Trustee may proceed to exercise all rights, privileges and remedies of the Owner Trustee under the Lease and may exercise all such rights and remedies either in the name of the Indenture Trustee or in the name of the Owner Trustee for the use and benefit of the Indenture Trustee and the Certificate Holders.

The Indenture Trustee hereby agrees that if no Indenture Event of Default has occurred and is continuing except such as is caused by a Lease Event of Default, then the Indenture Trustee shall proceed to foreclose the lien and security interest of this Indenture only if it is concurrently exercising (or has previously exercised) one or more of the remedies referred to in Section 15 of the Lease as it shall determine in its sole good faith discretion, unless it is then stayed or otherwise prevented from doing so by operation of law; provided, however, that if the Indenture Trustee is so stayed or prevented by operation of law as a result of a case or proceeding under the Bankruptcy Code in respect of the Lessee's bankruptcy, the Indenture Trustee will not foreclose the lien of this Indenture (i) until two Business Days following the expiration of the 60-day period provided for in Section 1168 of the Bankruptcy Code for the Lessee's bankruptcy trustee to agree to perform all obligations of the Lessee under the Lease (or such later date to which the expiration of such period shall be extended with the prior written consent of the Indenture Trustee) or (ii) if, within said period, such trustee agrees to perform all obligations of the Lessee under the Lease and to effect a cure for any outstanding Events of Default as provided in said Section 1168 and such trustee cures all outstanding Events of Default prior to the later of (a) 30 days after the date of each such Event of Default and (b) the expiration of such period.

### 7.3. Certain Rights of the Owner Trustee

(a) Right to Cure. In the event of the occurrence of a Lease Event of Default as a result of the failure of the Lessee to timely and fully pay an installment of Basic Rent under the Lease, the Owner Trustee or the Owner Participant may, during the five (5) Business Day period following the giving of written notice by the Indenture Trustee to the Owner Trustee, the Owner Participant and the holders of the Loan Certificates of the occurrence of such Lease Event of Default (which notice the Indenture Trustee agrees to give promptly upon any of its Responsible Officer's having actual knowledge of such non-payment of an installment of Basic Rent becoming a Lease Event of Default unless such rights are no longer in effect pursuant to the below proviso), pay to the Indenture Trustee an amount equal to any principal and interest (including interest, if any, on overdue payments of principal and interest) then due and payable on the Loan Certificates, and such payment by the Owner Trustee shall be deemed to cure such Lease Event of Default arising on account of the non-payment by the Lessee of such installment of Basic Rent under the Lease and any Indenture Event of Default arising therefrom; provided, however, that the Owner Trustee and the Owner Participant may not exercise such right in respect of more than 3 consecutive Basic Rent payment Lease Events of Default or in any event more than a total of 5 times throughout the term of the Lease. The Indenture Trustee shall not take any action to exercise remedies hereunder or under the Lease in respect of any such Lease Event of Default giving rise to an actual or potential Indenture Event of Default which is curable in accordance with the foregoing prior to the expiration of the five-day cure period.

In the event of the occurrence of a Lease Event of Default (other than a default in the payment of Basic Rent), the Owner Trustee or the Owner Participant may, during the fifteen (15) Business Day period following the giving of written notice by the Indenture Trustee to the Owner Trustee, the Owner Participant and the Certificate Holders of the occurrence of such Lease Event of Default, cure such Lease Event of Default by making such payment prior to the end of such cure period as is necessary to accomplish the observance or performance of the defaulted covenant, condition or agreement to the party entitled to the same.

Neither the Owner Trustee nor the Owner Participant shall, by exercising the right to cure any such Lease Default or Lease Event of Default, obtain any lien, charge or encumbrance of any kind on any of the Collateral for or on account of costs or expenses incurred in connection with the exercise of such right nor shall any claims of the Owner Trustee or the Owner Participant against the Lessee or any other party for the repayment of such costs or expenses impair the prior right and security interest of the Indenture Trustee in and to the Collateral. Upon such payment by the Owner Trustee of the amount of principal and interest then due and payable on the Loan Certificates, the Owner Trustee shall be subrogated to the rights of the Indenture Trustee in respect of any Basic Rent which was overdue at the time of such payment and interest payable



by the Lessee on account of its being overdue, and therefore, if no other Indenture Event of Default shall have occurred and be continuing and if all principal and interest payments due on the Loan Certificates and all other sums owing to the holders thereof under any Operative Agreement have been paid at the time of receipt by the Indenture Trustee of such Basic Rent and such interest, the Owner Trustee shall be entitled to receive such Basic Rent and such interest upon receipt thereof by the Indenture Trustee; provided that (i) in the event the principal and interest on the Loan Certificates shall have become due and payable pursuant to Section 7.2(a) hereof, such subrogation shall, until principal of and interest on all Loan Certificates shall have been paid in full, be subordinate to the rights of the Indenture Trustee in respect of such payment of Basic Rent and such interest prior to receipt by the Owner Trustee of any amount pursuant to such subrogation, and (ii) the Owner Trustee shall not be entitled to seek to recover any such payment (or any payment in lieu thereof) except pursuant to the foregoing right of subrogation.

(b) Options to Prepay Loan Certificates. If an Indenture Event of Default which results solely from a Lease Event of Default has occurred and is continuing (and no other Indenture Event of Default exists), and the Indenture Trustee either (i) has not pursued any remedy under the Lease for a period of one-hundred eighty (180) days following knowledge by the Indenture Trustee (as defined in Section 8.2(g) hereof) of such Indenture Event of Default or (ii) has declared the entire unpaid balance of the Loan Certificates immediately due and payable pursuant to Section 7.2(a) hereof, then the Owner Trustee may, upon prior written notice to the Indenture Trustee and each Certificate Holder specifying the date on which it will prepay the Loan Certificates (which date shall not be less than 10 nor more than 20 Business Days after the giving of such notice), prepay the Loan Certificates by payment of the unpaid principal amount thereof and accrued interest thereon to the date of payment, without premium, together with all other sums then due and payable to the Indenture Trustee or the Certificate Holders hereunder or under the Participation Agreement, the Lease or the Loan Certificates. During the period from the date the Owner Trustee gives notice of its intent to prepay the Loan Certificates through and including the prepayment date specified therein, the Indenture Trustee shall refrain from the exercise of any remedy hereunder or under the Lease in respect of such Indenture Event of Default. The Owner Trustee may not exercise its prepayment option under this Section 7.3(b) with respect to less than all of the Loan Certificates.

7.4. Acceleration Clause. In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Indenture, the principal of the Loan Certificates, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also in the case of any such sale, the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the

Loan Certificates and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Loan Certificates including principal and interest thereof out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in cash.

7.5. Waiver by Owner Trustee. To the extent permitted by law, the Owner Trustee covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of the Owner Trustee acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Indenture, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Indenture Trustee, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

7.6. Effect of Sale. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Owner Trustee in and to the property sold, and shall be a perpetual bar, both at law and in equity, against the Owner Trustee, its successors and assigns, and against any and all Persons claiming the property sold or any part thereof under, by or through the Owner Trustee, its successors or assigns (subject, however, to the then existing rights, if any, of the Lessee under the Lease).

7.7. Application of Proceeds. The purchase money proceeds and/or avails of any sale of the Collateral or any part thereof and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and attorneys fees, incurred or made hereunder by the Indenture Trustee, or the holder or holders of the Loan Certificates and any compensation due and owing to the Indenture Trustee and of all taxes, assessment or Liens superior to the Lien of these

presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) Second, to the payment to the Certificate Holders of the amount then owing or unpaid on the Loan Certificates for principal, interest and premium, if any; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Loan Certificates, then ratably according to the aggregate of such principal and the accrued and unpaid interest and premium, if any, with application on each Loan Certificate to be made, first, to the unpaid interest thereon, second, to unpaid premium, if any, thereon, and third, to unpaid principal thereof; such application to be made upon presentation of the several Loan Certificates, and the notation thereon of the payments if partially paid, or the surrender and cancellation thereof, if fully paid; and

(c) Third, to the payment of the surplus, if any, to the Owner Trustee, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

7.8. Discontinuance of Remedies. A Majority of Certificate Holders may upon written notice to the Indenture Trustee direct the Indenture Trustee to discontinue any enforcement proceedings commenced by the Indenture Trustee. Without limiting the foregoing, a Majority of the Certificate Holders may, upon written notice to the Indenture Trustee (which shall in turn notify the Owner Trustee and the Lessee), rescind any acceleration of the maturity of the Loan Certificates, and direct that the payment schedule on the Loan Certificates shall be that which existed immediately prior to such acceleration, if (i) all Indenture Events of Default, other than the non-payment of any portion of the Loan Certificates which has become due and payable solely by reason of the acceleration of the Loan Certificates, have been cured or waived, and (ii) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction. In case the Indenture Trustee shall have proceeded to enforce any right under this Indenture by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Owner Trustee, the Indenture Trustee and the holder or holders of the Loan Certificates shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Indenture.

7.9. Cumulative Remedies. No delay or omission of the Indenture Trustee or of the holder of any Loan Certificate to exercise any right or power arising from any Indenture Default or Indenture Event of Default shall exhaust or impair any such right or power or prevent its exercise during the continuance thereof. No waiver by the Indenture Trustee, or the holder of any Loan Certificate of any such Indenture Default or Indenture Event of Default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent Indenture

Default or Indenture Event of Default, or to impair the rights resulting therefrom except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Indenture operate to prejudice, waive or affect the security of this Indenture or any rights, powers or remedies hereunder, nor shall the Indenture Trustee or holder of any of the Loan Certificates be required to first look to, enforce or exhaust such other or additional security, collateral or guaranty.

#### SECTION 8. THE INDENTURE TRUSTEE.

The Indenture Trustee accepts the trusts hereunder and agrees to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Owner Trustee and the respective holders of the Loan Certificates at any time outstanding by their acceptance thereof agree:

8.1. Duties of Indenture Trustee. Subject to the exceptions listed in Section 8.2, the Indenture Trustee undertakes (i) except while an Indenture Event of Default actually known to a Responsible Officer of the Indenture Trustee shall have occurred and be continuing, to perform such duties and only such duties as are specifically set forth in this Indenture, and (ii) while an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to exercise such of the rights and powers as are vested in it by this Indenture and to use the same degree of care and skill in their exercise as an ordinary prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Indenture Trustee upon receipt of instruments furnished to the Indenture Trustee pursuant to the provisions of this Indenture shall examine the same to determine whether or not such instruments conform to the requirements of this Indenture.

8.2. Indenture Trustee's Liability. The Indenture Trustee shall be liable in its individual capacity for its own gross negligence or willful misconduct, or in the case of performance of its obligations under Section 5.5 or as is provided in Section 8.5, for its own negligence, except that:

(a) unless an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, the Indenture Trustee shall not be liable except for the performance of such duties as are specifically set forth in this Indenture and no implied duties, covenants or obligations shall be read into this Indenture (or any other Operative Agreement to which the Indenture Trustee is a party) against the Indenture Trustee

but the duties, covenants and obligations of the Indenture Trustee shall be determined solely by the express provisions of this Indenture; and

(b) in the absence of bad faith on the part of the Indenture Trustee, the Indenture Trustee may rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be protected and without any liability in acting upon, any resolution, Officer's Certificate, or other certificate, opinion of counsel, request, notice, consent, waiver, order, signature, guaranty, notarial seal, stamp, acknowledgment, verification, appraisal, report, stock certificate, or other paper or document believed by the Indenture Trustee to be genuine and to have been signed, affixed or presented by the proper party or parties; and

(c) in the absence of bad faith on the part of the Indenture Trustee, whenever the Indenture Trustee, or any of its agents, representatives, experts or counsel, shall consider it necessary or desirable that any matter be proved or established, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officer's Certificate; provided, however, that the Indenture Trustee, or such agent, representative, expert or counsel, may, but shall not be under any obligation (unless directed by a Majority of Certificate Holders to do so) to, require such further and additional evidence and make such further investigation as it or they may consider reasonable; and

(d) the Indenture Trustee may perform any of its powers and duties hereunder directly or through agents or attorneys and may consult with and obtain advice from such counsel, accountants and other skilled persons to be selected and retained by it (other than persons regularly in its employ), as the Indenture Trustee may reasonably deem necessary, and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons given within such person's or persons' particular area of competence as long as the Indenture Trustee shall have exercised reasonable care in good faith in selecting such counsel, accountants or other skilled persons; and

(e) the Indenture Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with any direction or request of the required percentage of the holders of the Loan Certificates; and

(f) the Indenture Trustee shall not be liable for any error of judgment made in good faith by an officer of the Indenture Trustee unless it shall be proved that the Indenture

Trustee was grossly negligent in ascertaining the pertinent facts, and

(g) the Indenture Trustee shall not be deemed to have knowledge of any Lease Default, Lease Event of Default, Indenture Default, Indenture Event of Default or Event of Loss unless and until a Responsible Officer of the Corporate Trust Department of the Indenture Trustee who customarily handles corporate trusts shall have actual knowledge thereof or the Indenture Trustee shall have received written advice thereof from the holder of any Loan Certificate, the Owner Trustee or the Lessee; and

(h) whether or not an Indenture Event of Default shall have occurred, the Indenture Trustee shall not be under any obligation to take any action under this Indenture which may tend to involve it in any expense or liability the payment of which within a reasonable time is not, in its reasonable opinion, assured to it by the security afforded to it by the terms of this Indenture, unless and until it is requested in writing so to do by one or more holders of Loan Certificates outstanding hereunder and furnished, from time to time as it may require, with reasonable security and indemnity; and

(i) whether or not an Indenture Event of Default shall have occurred, whenever it is provided in this Indenture or any other Operative Agreement that the Indenture Trustee consent to any act or omission by any Person or that the Indenture Trustee exercise its discretion in any manner, the Indenture Trustee shall seek the written acquiescence of all of the Certificate Holders and, unless written evidence of the acquiescence of a Majority of Certificate Holders has been received by the Indenture Trustee, it shall be fully justified in refusing so to consent or so to exercise its discretion; provided, however, that a Majority of Certificate Holders shall have the right, upon furnishing to the Indenture Trustee such indemnification as the Indenture Trustee shall reasonably request, by an instrument in writing delivered to the Indenture Trustee, to determine which of the remedies herein set forth shall be adopted and to direct the time, method and place of conducting all proceedings to be taken under the provisions of this Indenture for the enforcement thereof or of the Loan Certificates; provided, however, that notwithstanding any provision herein to the contrary, (i) the Indenture Trustee shall only take such action, or refrain from taking such action, with respect to any Indenture Default or Indenture Event of Default (including but not limited to, with respect to the exercise of any rights or remedies hereunder), if and to the extent so instructed to do so in writing by the Majority of Certificate Holders, and although the Indenture Trustee shall have the right to decline to follow any such direction if the Indenture Trustee seeks the advice of

counsel and is advised by counsel that the action or proceedings so directed may not lawfully be taken or would be unjustly prejudicial to holders of Loan Certificates not parties to such direction or would be contrary to the terms of the Lease, the Indenture Trustee shall have no obligation to any Person to seek such advice or decline to follow such instruction, and (ii) the Indenture Trustee shall, for all other purposes of the Operative Agreements, be entitled to obtain and rely upon the written direction of the Majority of Certificate Holders prior to taking or refraining from taking any action that it may be required or entitled to take or refrain from taking as Indenture Trustee under the Operative Agreements, and unless and until the Indenture Trustee shall receive such direction, it shall not have any obligation to so take or refrain from taking such action.

8.3. No Responsibility of Indenture Trustee for Recitals. The recitals and statements contained herein and in the Loan Certificates (except for the Indenture Trustee's certificate of authentication endorsed on the Loan Certificates) shall be taken as the recitals and statements of the Owner Trustee, and the Indenture Trustee assumes no responsibility for the correctness of the same, nor shall the Indenture Trustee have any responsibility for or any liability with respect to any disclosure, warranty, representation or concealment or failure to disclose in connection with the offering, solicitation, sale or distribution of the Loan Certificates by the Owner Trustee or by any other Person.

The Indenture Trustee makes no representation as to the validity or sufficiency of this Indenture, or of the Loan Certificates secured hereby, the security hereby or thereby afforded, the title of the Owner Trustee to the Collateral or the descriptions thereof, or the filing or recording or registering of this Indenture or any other document. The Indenture Trustee shall assume, and shall be fully protected in assuming, that the Owner Trustee is authorized by the Trust Agreement to enter into this Indenture and to take all action to be taken by it pursuant to the provisions hereof, and shall not be under any duty to inquire as to the authorization of the Owner Trustee with respect thereto.

The Indenture Trustee shall not be concerned with or accountable to any Person for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions of this Indenture or of any property or Securities or the proceeds thereof which shall be released from the lien hereof in accordance with the provisions of this Indenture.

8.4. Certain Limitations on Indenture Trustee's Rights to Compensation and Indemnification. Except to the extent otherwise expressly provided in the Operative Agreements, the Indenture Trustee shall have no right against the holder of any Loan Certificate for the payment of compensation for its services hereunder or any expenses or

disbursement incurred in connection with the exercise and performance of its powers and duties, and it shall have no lien on or security interest in the Collateral as security for such compensation, expenses, disbursements and indemnification except to the extent provided for in Section 7.7.

8.5. Status of Moneys Received. All moneys received by the Indenture Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys, except to the extent required by law, and may be deposited by the Indenture Trustee under such general conditions as may be prescribed by law in the Indenture Trustee's general banking department. The Indenture Trustee shall be under no liability for interest on any moneys received by it hereunder, except that in connection with any investment pursuant to Section 5.5, the Indenture Trustee, in its individual capacity, shall bear the same liability as it bears in connection with investments pursuant to Section 2.3(b) of the Participation Agreement. The Indenture Trustee and any affiliated corporation may not become the owner of any Loan Certificate secured hereby. The Indenture Trustee and any affiliated corporation may be interested in any other financial transaction with the Owner Trustee or any affiliated corporation, or the Indenture Trustee may act as depository or otherwise in respect to other Securities of the Owner Trustee or any affiliated corporation, all with the same rights which it would have if it were not the Indenture Trustee.

8.6. Resignation of Indenture Trustee. The Indenture Trustee may at any time with or without cause resign and be discharged from the trusts created hereby by delivering notice thereof pursuant to Section 11.3 to the Owner Trustee, the Owner Participant and all holders of the Loan Certificates at the time outstanding, specifying a date (not earlier than thirty (30) days after the date of such notice) when such resignation shall take effect.

Such resignation shall take effect on the day specified in such notice, unless previously a successor Indenture Trustee shall have been appointed as provided in Sections 8.8 and 8.9 in which event such resignation shall take effect immediately upon the appointment of such successor Indenture Trustee; provided, however, that no such resignation shall be effective hereunder unless and until a successor Indenture Trustee shall have been appointed and shall have accepted such appointment as provided in Sections 8.8 and 8.9; provided, further, that the Owner Trustee and the Certificate Holders shall use their best efforts to effectively replace the Indenture Trustee on or before the expiration of the above-referenced thirty (30) day notice period.

8.7. Removal of Indenture Trustee. The Indenture Trustee may be removed at any time, for or without cause, by an instrument or instruments in writing executed by a Majority of the Certificate Holders and delivered to the Indenture Trustee with a copy to the Owner Trustee and to the Lessee, specifying the removal and the date when it shall take



effect; provided, however, that no such removal shall be effective hereunder unless and until a successor trustee shall have been appointed and shall have accepted such appointment as provided in Sections 8.8 and 8.9.

8.8. Appointment of Successor Indenture Trustee. In case at any time the Indenture Trustee shall resign or be removed or become incapable of acting, a successor Indenture Trustee may be appointed by the holders of a majority in aggregate principal amount of the Loan Certificates (other than the Indenture Trustee) at the time outstanding, by an instrument or instruments in writing executed by such Certificate Holders and filed with such successor Indenture Trustee, the Owner Trustee and the Lessee.

Until a successor Indenture Trustee shall be so appointed by the Certificate Holders, the Owner Trustee shall appoint a successor Indenture Trustee to fill such vacancy, by an instrument in writing executed by the Owner Trustee and delivered to the successor Indenture Trustee. If all or substantially all of the Collateral shall be in the possession of one or more receivers, trustees, custodians, liquidators or assignees for the benefit of creditors, then such receivers, trustees, custodians, liquidators or assignees may, by an instrument in writing delivered to the successor Indenture Trustee, appoint a successor Indenture Trustee. Promptly after any such appointment, the Owner Trustee, or any such receivers, trustees, custodians, liquidators or assignees, as the case may be, shall give notice thereof pursuant to Section 11.3 to each holder of the Loan Certificates at the time outstanding.

Any successor Indenture Trustee so appointed by the Owner Trustee, or such receivers, trustees, custodians, liquidators or assignees, shall immediately and without further act be superseded by a successor Indenture Trustee appointed by the holders of a majority in aggregate principal amount of the Loan Certificates (other than the Indenture Trustee) then outstanding.

If a successor Indenture Trustee shall not be appointed pursuant to this Section within thirty (30) days after the resignation or removal of the retiring Indenture Trustee, the holder of any Loan Certificate (other than the retiring Indenture Trustee) or such retiring Indenture Trustee (unless the retiring Indenture Trustee is being removed) may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee, and such court may thereupon, after such notice, if any, as it may consider proper, appoint a successor Indenture Trustee.

8.9 Succession of Successor Indenture Trustee. Any successor Indenture Trustee appointed hereunder shall execute, acknowledge and deliver to the Owner Trustee and the predecessor Indenture Trustee an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without any further act, deed, conveyance or transfer, shall become vested with the title to the Collateral, and with all the

rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee in the trust hereunder, with like effect as if originally named as Indenture Trustee herein and the predecessor Indenture Trustee shall thereupon be released from any further duties and obligations as indenture trustee arising after such appointment. Upon the request of either such Indenture Trustee, however, the Owner Trustee and the other Indenture Trustee shall execute and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Indenture Trustee its interest in the Collateral and all such rights, powers, trusts, duties and obligations of the predecessor Indenture Trustee hereunder, and the predecessor Indenture Trustee shall also assign and deliver to the successor Indenture Trustee any property subject to the lien of this Indenture which may then be in its possession; provided, however, the predecessor Indenture Trustee's failure to make such request or the successor's Indenture Trustee's actions or failure to take action in that regard shall not have any effect on the operation or extent of the vesting and release provided for in the first sentence of this Section 8.9.

8.10. Eligibility of Indenture Trustee. The Indenture Trustee shall be a state or national bank or trust company in good standing, organized under the laws of the United States of America or of any State and having a capital, surplus and undivided profits aggregating at least \$100,000,000, if there be such a bank or trust company willing and able to accept such trust upon reasonable and customary terms.

In case the Indenture Trustee shall cease to be eligible in accordance with the provisions of this Section, the Indenture Trustee shall resign immediately in the manner and with the effect specified in Section 8.6.

8.11. Successor Indenture Trustee by Merger. Any corporation into which the Indenture Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Indenture Trustee shall be a party, or any state or national bank or trust company in any manner succeeding to the corporate trust business of the Indenture Trustee as a whole or substantially as a whole, if eligible as provided in Section 8.10, shall be the successor of the Indenture Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything to the contrary contained herein notwithstanding.

8.12. Co-Trustees. At any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Collateral may at the time be located, the Owner Trustee and the Indenture Trustee jointly shall have power and shall execute and deliver all instruments, to appoint one or more Persons approved by the Indenture Trustee, to act as co-trustee, or co-trustees, jointly with the Indenture Trustee, or separate trustee or separate trustees, of all or any part of the Collateral, and to vest in such Person or Persons in such capacity,

such interest in the Collateral or any part thereof, and such rights, powers, duties, trusts or obligations as the Owner Trustee and the Indenture Trustee may consider necessary or desirable. If the Owner Trustee shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee alone shall have power to make such appointment.

#### SECTION 9. LIMITATIONS OF LIABILITY

Anything in this Indenture to the contrary notwithstanding, neither the Indenture Trustee nor the holder of any Loan Certificate nor the successors or assigns of any of said Persons, shall have any claim, remedy or right to proceed against FSBU, in its individual corporate capacity or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of FSBU, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any penalty or assessment or otherwise, for the payment of any deficiency or any other sum owing on account of the indebtedness evidenced by the Loan Certificates or for the payment of any liability resulting from the breach of any representation, agreement or warranty of any nature whatsoever in this Indenture, from any source other than the Collateral, including the Rent, other than Excepted Rights in Collateral. The Indenture Trustee by the execution of this Indenture and the holders of the Loan Certificates by acceptance thereof, waive and release any personal liability of FSBU, in its individual corporate capacity and any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of FSBU, for and on account of such indebtedness or such liability, and the Indenture Trustee and the holders of the Loan Certificates agree (i) to look solely to the Collateral, including the Rent, other than Excepted Rights in Collateral, for the payment of said indebtedness or the satisfaction of such liability, and (ii) not to enter into any arrangement which would constitute cross collateralization or credit enhancement of the Loan Certificates within the meaning of Temp. Treas. Reg. sec. 1.861-10T(b), it being expressly understood by the Indenture Trustee and the holders of the Loan Certificates that neither the Owner Trustee (or any successor thereto) in its individual capacity, nor the Owner Participant, nor any other Person, shall have any personal liability whatsoever for any amounts payable under any Loan Certificate; provided, however, nothing herein contained shall limit, restrict or impair the rights of the holders of the Loan Certificates or the Indenture Trustee to accelerate the maturity of the Loan Certificates upon an Indenture Event of Default under this Indenture; to bring suit and obtain a judgment against the Owner Trustee on the Loan Certificates or to exercise all rights and remedies provided under this Indenture or otherwise realize upon the Collateral.

#### SECTION 10. [INTENTIONALLY BLANK]

SECTION 11. SUPPLEMENTS; WAIVERS.

11.1. Supplemental Indentures Without Certificate Holders' Consent. The Owner Trustee and the Indenture Trustee from time to time and at any time, subject to the restrictions in this Indenture contained, may, but in the case of the Indenture Trustee without any obligation to obtain the direction or consent of a Majority of the Certificate Holders, enter into an agreement or agreements supplemental hereto, which thereafter shall form a part hereof, for any one or more or all of the following purposes:

(a) to add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon the Owner Trustee;

(b) to subject to the Lien of this Indenture additional property hereafter acquired by the Owner Trustee and intended to be subjected to the Lien of this Indenture and to correct and amplify the description of the Collateral;

(c) to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, except that nothing herein contained shall permit or authorize the inclusion of the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939 or any corresponding provision in any similar federal statute hereafter in effect;

(d) to reflect a revised payment schedule on the Loan Certificates pursuant to a re-amortization of the Loan Certificates permitted by and complying with the terms of Section 2.7 of the Participation Agreement; and

(e) for any other purpose not inconsistent with the terms of this Indenture or to cure any ambiguity or cure, correct or supplement any defect or inconsistent provisions of this Indenture or any supplement and the covenants to perform all requirements of any such supplemental agreement.

No restriction or obligation imposed upon the Owner Trustee may, except as otherwise provided in this Indenture, be waived or modified by any such supplemental agreement.

11.2. Supplements to Lease Without Certificate Holders' Consent. The Indenture Trustee from time to time and at any time, subject to the restrictions contained in this Indenture, may, but without any obligation to first obtain the direction or consent of a Majority of the Certificate Holders, consent to any amendment or supplement to the Lease for any one of the following purposes:

(a) to add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon the Lessee; and

(b) to adjust the Basic Rent, Stipulated Loss Values and Termination Values payable under the Lease pursuant to Section 2.7 of the Participation Agreement and subject to all of the conditions set forth in said Section 2.7; provided, however, that on or before the effective date of any amendment of or supplement to the Lease pursuant to the provisions of this paragraph (b), the Indenture Trustee shall have received an Officer's Certificate of the Lessee addressed to the holders of the Loan Certificates and the Indenture Trustee, to the effect that, after giving effect to such supplement, the amount of Basic Rent payable on each Rent Payment Date under the Lease equals or exceeds the amount payable on such date for principal and accrued interest (other than the interest only payment due on June 15, 1990) on all the Loan Certificates, and the amounts of Stipulated Loss Value and Termination Value payable on any date with respect to any Unit under the Lease equals or exceeds the Loan Value of such Unit plus any premium due pursuant to Section 6.2 hereof after giving effect to the payment of Basic Rent on such date, which Certificate shall set forth sufficient detailed information to demonstrate the matters covered in this proviso.

No restriction or obligation imposed upon the Lessee may, except as otherwise provided in this Indenture, be waived or modified by any such supplement to the Lease.

11.3. Waivers and Consents by Certificate Holders; Supplemental Indentures with Certificate Holders' Consent. Upon the waiver or consent of the holders of a Majority of Certificate Holders (x) the Owner Trustee may take any action prohibited, or omit the taking of any action required, by any of the provisions of this Indenture or any agreement supplemental hereto, or (y) the Owner Trustee and the Indenture Trustee may enter into an agreement or agreements supplemental hereto for the purpose of adding, changing or eliminating any provisions of this Indenture or of any agreement supplemental hereto or modifying in any manner the rights and obligations of the holders of the Loan Certificates and the Owner Trustee; provided, however, that no such waiver or supplemental agreement shall (i) impair or affect the right of any holder to receive payments or prepayments of the principal of and payments of the interest and premium on its Loan Certificate, as therein and herein provided, without the consent of such holder; (ii) permit the creation of any Lien or security interest with respect to any of the Collateral, without the consent of the holders of all Loan Certificates at the time outstanding; (iii) effect the deprivation of the holder of any Loan Certificate of the benefit of the Lien and security interest of this Indenture upon all or any part of the Collateral without the consent of such holder; (iv) reduce the aforesaid percentage of the aggregate

principal amount of Loan Certificates, the holders of which are required to consent to any such waiver or supplemental agreement pursuant to this Section, without the consent of the holders of all of the Loan Certificates at the time outstanding; or (v) modify the rights, duties or immunities of the Indenture Trustee, without the consent of the Indenture Trustee and of the holders of all of the Loan Certificates at the time outstanding. The Owner Trustee shall not pay or cause to be paid to any Certificate Holder any remuneration for or in connection with such Certificate Holder's consent to any waiver or consent unless each Certificate Holder is paid remuneration in a ratable amount (based on the proportion which the principal balance of such Certificate Holder's Loan Certificate bears to the principal balance of all of the Loan Certificates).

11.4. Notice of Supplemental Indentures. Promptly after the execution by the Owner Trustee and the Indenture Trustee of any waiver, consent or supplemental agreement pursuant to the provisions of Sections 11.1, 11.2 or 11.3, the Indenture Trustee shall deliver a conformed copy thereof, mailed, first-class, postage prepaid, to each holder of the Loan Certificates. Any failure of the Indenture Trustee to deliver such copy, or any defect therein, shall not, however, in any way impair or affect the validity of any such waiver, consent or supplemental agreement.

11.5. Opinion of Counsel Conclusive as to Supplemental Indenture. The Indenture Trustee is hereby authorized to join with the Owner Trustee in the execution of any such supplemental agreement authorized or permitted by the terms of this Indenture and to make the further agreements and stipulations which may be therein contained, and the Indenture Trustee may receive an opinion of counsel as conclusive evidence that any supplemental agreement executed pursuant to the provisions of this Section 11 complies with the requirements of this Section 11.

## SECTION 12. MISCELLANEOUS.

12.1. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Indenture contained by or on behalf of the Owner Trustee or by or on behalf of the Indenture Trustee, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

12.2. Severability. Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12.3 Communications All communications provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested upon receipt thereof, or, (c) in the case of notice by such a telecommunications device, upon confirmation of receipt thereof, addressed to each party at the following addresses:

If to the Owner Trustee:

First Security Bank of Utah, National Association  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department  
Fax No.: (801) 350-5053  
Confirmation No.: (801) 350-5630

If to the Owner Participant:

First Bank National Association  
120 South Sixth Street  
Minneapolis, Minnesota 55402  
Attention: James Koski  
Fax No.: (612) 370-4537  
Confirmation No.: (612) 370-3579

If to the Indenture Trustee:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
P.O. Box 2258  
Baltimore, Maryland 21203  
Attention: Corporate Trust Department  
Fax No.: (301) 237-5437  
Confirmation No.: (301) 237-5606

If to the holders of Loan Certificates:

At their addresses for notices  
set forth in the appropriate Register

or to any such party at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

12.4. Release. The Indenture Trustee shall release this Indenture and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that all indebtedness secured hereby has been fully paid or discharged.

12.5. Business Day. Notwithstanding anything herein or in any other Operative Agreement to the contrary, if the date on which any payment is to be made pursuant to this Indenture is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day.

12.6. Governing Law. This Indenture and the Loan Certificates shall be delivered in and construed in accordance with and governed by the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York.

12.7. Counterparts. This Indenture may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Indenture.

12.8. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.



IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have caused this Indenture to be executed, as of the day and year first above written.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION,  
not individually but solely as Owner  
Trustee under each of BN Trust  
No. 89-1, BN Trust No. 89-2, BN  
Trust No. 89-3, BN Trust No. 89-4,  
and BN Trust No. 89-5

By *Kelli Schmitt*  
Its: ASSISTANT TRUST OFFICER

AS OWNER TRUSTEE

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity, except as expressly stated  
herein, but solely as Indenture  
Trustee

By \_\_\_\_\_  
Its: \_\_\_\_\_

AS INDENTURE TRUSTEE

(SEAL)

Attest: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Assistant Corporate Trust Officer

IN WITNESS WHEREOF, the Owner Trustee and the Indenture Trustee have caused this Indenture to be executed, as of the day and year first above written.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION,  
not individually but solely as Owner  
Trustee under each of BN Trust  
No. 89-1, BN Trust No. 89-2, BN  
Trust No. 89-3, BN Trust No. 89-4,  
and BN Trust No. 89-5

By \_\_\_\_\_  
Its: \_\_\_\_\_

AS OWNER TRUSTEE

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity, except as expressly stated  
herein, but solely as Indenture  
Trustee

By  \_\_\_\_\_  
Its: VICE PRESIDENT

AS INDENTURE TRUSTEE

(SEAL)

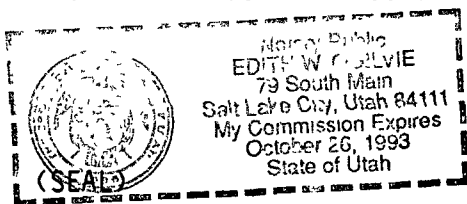
Attest:  \_\_\_\_\_

Name: J. A. Adams

Title: ~~Assistant~~ Corporate Trust Officer

STATE OF Utah )  
 ) SS  
COUNTY OF Salt Lake )

On this 17<sup>th</sup> day of November, 1989, before me personally appeared Kellie Schultz to me personally known, who being by me duly sworn, says that she is an ATD of First Security Bank of Utah, National Association, that said instrument was signed and sealed on November 17, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



*Edith W. Gilvie*  
Notary Public

My commission expires:

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of November, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of Mercantile-Safe Deposit and Trust Company, that said instrument was signed and sealed on November \_\_, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(SEAL)

My commission expires:

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of November, 1989, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of First Security Bank of Utah, National Association, that said instrument was signed and sealed on November \_\_, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(SEAL)

My commission expires:

STATE OF MARYLAND )  
 ) SS  
COUNTY OF BALTIMORE

On this, 16th day of November, 1989, before me personally appeared R. E. Schreiber, to me personally known, who being by me duly sworn, says that he is a VICE PRESIDENT of Mercantile-Safe Deposit and Trust Company, that said instrument was signed and sealed on November 16, 1989 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

*Linda Lee Kelly*

(SEAL)

My commission expires: July 1, 1990

Schedule 1 to  
Security Agreement

SERIES A  
AMORTIZATION SCHEDULE  
[as a percentage of Original Principal Amount]

Payment Date	Principal	Interest	Debt Service
12/15/1990	0.00000000	4.71000000	4.71000000
6/15/1991	1.22456422	4.71000000	5.93456422
12/15/1991	0.00000000	4.65232303	4.65232303
6/15/1992	1.33991817	4.65232303	5.99224119
12/15/1992	0.00000000	4.58921288	4.58921288
6/15/1993	1.46613846	4.58921288	6.05535134
12/15/1993	0.00000000	4.52015776	4.52015776
6/15/1994	1.60424870	4.52015776	6.12440646
12/15/1994	0.00000000	4.44459764	4.44459764
6/15/1995	1.75536893	4.44459764	6.19996657
12/15/1995	0.00000000	4.36191977	4.36191977
6/15/1996	1.92072468	4.36191977	6.28264445
12/15/1996	0.00000000	4.27145364	4.27145364
6/15/1997	2.10165695	4.27145364	6.37311058
12/15/1997	0.00000000	4.17246559	4.17246559
6/15/1998	1.69301158	4.17246559	5.86547717
12/15/1998	0.00000000	4.09272475	4.09272475
6/15/1999	1.62400621	4.09272475	5.71673095
12/15/1999	0.00000000	4.01623406	4.01623406
6/15/2000	3.71241322	4.01623406	7.72864727
12/15/2000	0.00000000	3.84137939	3.84137939
6/15/2001	3.55505498	3.84137939	7.39643438
12/15/2001	0.00000000	3.67393630	3.67393630
6/15/2002	3.77017987	3.67393630	7.44411617
12/15/2002	0.00000000	3.49636083	3.49636083
6/15/2003	4.00470651	3.49636083	7.50106734
12/15/2003	0.00000000	3.30773915	3.30773915
6/15/2004	4.25392264	3.30773915	7.56166180
12/15/2004	0.00000000	3.10737940	3.10737940
6/15/2005	6.38017051	3.10737940	9.48754991
12/15/2005	0.00000000	2.80687337	2.80687337
6/15/2006	7.39627620	2.80687337	10.20314957
12/15/2006	0.00000000	2.45850876	2.45850876
6/15/2007	8.09300542	2.45850876	10.55151418
12/15/2007	0.00000000	2.07732820	2.07732820
6/15/2008	8.85536653	2.07732820	10.93269473
12/15/2008	0.00000000	1.66024044	1.66024044
6/15/2009	9.68954205	1.66024044	11.34978249
12/15/2009	0.00000000	1.20386301	1.20386301
6/15/2010	10.60229692	1.20386301	11.80615992
12/15/2010	0.00000000	0.70449482	0.70449482
6/15/2011	11.60103329	0.70449482	12.30552811
12/15/2011	0.00000000	0.15808616	0.15808616
6/15/2012	3.35639397	0.15808616	3.51448013

Schedule 1 to  
Security Agreement

**SERIES B**  
**AMORTIZATION SCHEDULE**  
[as a percentage of Original Principal Amount]

Payment Date	Principal	Interest	Debt Service
12/15/1990	0.00000000	4.58500000	4.58500000
6/15/1991	1.78870858	4.58500000	6.37370858
12/15/1991	0.00000000	4.50298771	4.50298771
6/15/1992	1.95273316	4.50298771	6.45572087
12/15/1992	0.00000000	4.41345490	4.41345490
6/15/1993	2.13179879	4.41345490	6.54525369
12/15/1993	0.00000000	4.31571192	4.31571192
6/15/1994	2.32728474	4.31571192	6.64299666
12/15/1994	0.00000000	4.20900592	4.20900592
6/15/1995	2.54069675	4.20900592	6.74970267
12/15/1995	0.00000000	4.09251497	4.09251497
6/15/1996	2.77367864	4.09251497	6.86619361
12/15/1996	0.00000000	3.96534180	3.96534180
6/15/1997	3.02802497	3.96534180	6.99336678
12/15/1997	0.00000000	3.82650686	3.82650686
6/15/1998	2.19815935	3.82650686	6.02466621
12/15/1998	0.00000000	3.72572125	3.72572125
6/15/1999	4.36461963	3.72572125	8.09034089
12/15/1999	0.00000000	3.52560344	3.52560344
6/15/2000	4.22806937	3.52560344	7.75367281
12/15/2000	0.00000000	3.33174646	3.33174646
6/15/2001	4.47796156	3.33174646	7.80970802
12/15/2001	0.00000000	3.12643192	3.12643192
6/15/2002	4.74904147	3.12643192	7.87547339
12/15/2002	0.00000000	2.90868837	2.90868837
6/15/2003	6.67670428	2.90868837	9.58539266
12/15/2003	0.00000000	2.60256148	2.60256148
6/15/2004	8.18885419	2.60256148	10.79141568
12/15/2004	0.00000000	2.22710252	2.22710252
6/15/2005	8.93977212	2.22710252	11.16687464
12/15/2005	0.00000000	1.81721397	1.81721397
6/15/2006	9.75954923	1.81721397	11.57676319
12/15/2006	0.00000000	1.36973863	1.36973863
6/15/2007	10.65449989	1.36973863	12.02423852
12/15/2007	0.00000000	0.88122981	0.88122981
6/15/2008	11.63151753	0.88122981	12.51274734
12/15/2008	0.00000000	0.34792473	0.34792473
6/15/2009	7.58832572	0.34792473	7.93625045

Schedule 1 to  
Security Agreement

SERIES C  
AMORTIZATION SCHEDULE  
[as a percentage of Original Principal Amount]

Payment Date	Principal	Interest	Debt Service
12/15/1990	0.00000000	4.58500000	4.58500000
6/15/1991	1.78941649	4.58500000	6.37441649
12/15/1991	0.00000000	4.50295525	4.50295525
6/15/1992	1.95350598	4.50295525	6.45646124
12/15/1992	0.00000000	4.41338700	4.41338700
6/15/1993	2.13264248	4.41338700	6.54602949
12/15/1993	0.00000000	4.31560535	4.31560535
6/15/1994	2.32820580	4.31560535	6.64381115
12/15/1994	0.00000000	4.20885711	4.20885711
6/15/1995	2.54170227	4.20885711	6.75055938
12/15/1995	0.00000000	4.09232006	4.09232006
6/15/1996	2.77477637	4.09232006	6.86709643
12/15/1996	0.00000000	3.96509657	3.96509657
6/15/1997	3.02922336	3.96509657	6.99431993
12/15/1997	0.00000000	3.82620667	3.82620667
6/15/1998	2.19891878	3.82620667	6.02512545
12/15/1998	0.00000000	3.72538625	3.72538625
6/15/1999	4.36554956	3.72538625	8.09093581
12/15/1999	0.00000000	3.52522580	3.52522580
6/15/2000	4.22902961	3.52522580	7.75425541
12/15/2000	0.00000000	3.33132479	3.33132479
6/15/2001	4.47897955	3.33132479	7.81030435
12/15/2001	0.00000000	3.12596358	3.12596358
6/15/2002	4.75012110	3.12596358	7.87608468
12/15/2002	0.00000000	2.90817053	2.90817053
6/15/2003	6.59952802	2.90817053	9.50769855
12/15/2003	0.00000000	2.60558217	2.60558217
6/15/2004	8.18367804	2.60558217	10.78926021
12/15/2004	0.00000000	2.23036053	2.23036053
6/15/2005	8.93412132	2.23036053	11.16448185
12/15/2005	0.00000000	1.82073107	1.82073107
6/15/2006	9.75338024	1.82073107	11.57411131
12/15/2006	0.00000000	1.37353858	1.37353858
6/15/2007	10.64776521	1.37353858	12.02130379
12/15/2007	0.00000000	0.88533855	0.88533855
6/15/2008	11.62416528	0.88533855	12.50950383
12/15/2008	0.00000000	0.35237057	0.35237057
6/15/2009	7.68529053	0.35237057	8.03766110

Schedule 1 to  
Security Agreement

SERIES D  
AMORTIZATION SCHEDULE  
[as a percentage of Original Principal Amount]

Payment Date	Principal	Interest	Debt Service
12/15/1990	0.00000000	4.56000000	4.56000000
6/15/1991	3.22498973	4.56000000	7.78498973
12/15/1991	0.00000000	4.41294047	4.41294047
6/15/1992	3.51910880	4.41294047	7.93204927
12/15/1992	0.00000000	4.25246911	4.25246911
6/15/1993	3.84005152	4.25246911	8.09252063
12/15/1993	0.00000000	4.07736276	4.07736276
6/15/1994	4.19026422	4.07736276	8.26762698
12/15/1994	0.00000000	3.88628671	3.88628671
6/15/1995	4.57241632	3.88628671	8.45870302
12/15/1995	0.00000000	3.67778453	3.67778453
6/15/1996	4.98942068	3.67778453	8.66720521
12/15/1996	0.00000000	3.45026694	3.45026694
6/15/1997	4.71363098	3.45026694	8.16389792
12/15/1997	0.00000000	3.23532537	3.23532537
6/15/1998	6.20918723	3.23532537	9.44451260
12/15/1998	0.00000000	2.95218643	2.95218643
6/15/1999	6.11490412	2.95218643	9.06709055
12/15/1999	0.00000000	2.67334680	2.67334680
6/15/2000	9.30627460	2.67334680	11.97962140
12/15/2000	0.00000000	2.24898068	2.24898068
6/15/2001	10.59035942	2.24898068	12.83934010
12/15/2001	0.00000000	1.76606029	1.76606029
6/15/2002	11.55620020	1.76606029	13.32226049
12/15/2002	0.00000000	1.23909756	1.23909756
6/15/2003	12.61012566	1.23909756	13.84922322
12/15/2003	0.00000000	0.66407583	0.66407583
6/15/2004	13.76016912	0.66407583	14.42424495
12/15/2004	0.00000000	0.03661212	0.03661212
6/15/2005	0.80289739	0.03661212	0.83950951



FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION

Not Individually But Solely as Owner Trustee under BN  
Trust No. 89-\_\_

Secured Loan Certificate, Series \_\_-\_\_

NO. R- \_\_\_\_\_, 1989

\$ \_\_\_\_\_

FOR VALUE RECEIVED, the undersigned, First Security Bank of Utah, National Association, not individually but solely as trustee (the "Owner Trustee") under that certain Trust Agreement dated as of November 1, 1989, sometimes identified as BN Trust No. 89-\_\_ (the "Trust Agreement") promises to pay to

[Name of Loan Participant]

or registered assigns,  
the principal sum of

and to pay interest accrued and unpaid from the date hereof until maturity (computed on the basis of a 360-day year of 12 consecutive 30-day months) on the unpaid principal balance hereof, in one installment of interest only on June 15, 1990 and continuing with \_\_\_\_\_ (\_\_) consecutive semi-annual installments of principal and accrued interest on each December 15 and June 15 thereafter to and including \_\_\_\_\_. Interest accrued and payable on this Loan Certificate shall be computed at the rate of [\_\_\_\_\_% per annum]; provided, however, that any amount of principal hereunder not paid when due (whether at stated maturity, by acceleration or otherwise), and to the extent permitted by law, overdue interest, shall bear interest from the due date until such amount is paid in full at the rate of [\_\_\_\_\_% per annum] (computed on the same basis).

Each installment of principal shall be in an amount equal to the product the percentage set forth on Schedule 1 hereto opposite the payment date of such installment and the original principal amount of this Loan Certificate.

This Loan Certificate is one of the Secured Loan Certificates, Series \_\_, of the Owner Trustee not exceeding \$ \_\_\_\_\_ in aggregate principal amount (the "Series \_\_ Loan Certificates") which are equally and ratably with the Series \_\_ Loan Certificates, the Series \_\_ Loan Certificates and the Series \_\_ Loan Certificates secured by that certain

EXHIBIT A

Security Agreement and Trust Indenture, dated as of November 1, 1989 (the "Indenture") from the Owner Trustee to Mercantile-Safe Deposit and Trust Company, not in its individual capacity, except as expressly stated therein, but solely as indenture trustee (the "Indenture Trustee"). Capitalized terms used herein and not otherwise defined herein shall have the meaning assigned to such terms in the Indenture. Reference is made to the Indenture and all supplements and amendments thereto executed pursuant to the Indenture for a description of the Collateral, and the nature and extent of the security and rights of the Indenture Trustee, the holder or holders of the Loan Certificates and of the Owner Trustee in respect thereof.

Both the principal hereof and interest hereon are payable in coin or currency of the United States of America which at the time of payment shall be legal tender for the payment of public and private debts. If the date on which any payment on this Loan Certificate is to be made is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day. For purposes of this Loan Certificate, the term "Business Day" means any day other than a Saturday, Sunday or day on which banks in the States of Illinois, New York or Maryland are authorized or required to close.

This Loan Certificate may not be prepaid by the Owner Trustee except upon the terms and subject to the conditions set forth in the Indenture. The terms and provisions of the Indenture and the rights and obligations of the Indenture Trustee and the rights of the holders of the Loan Certificates may be changed and modified to the extent permitted by and as provided in the Indenture.

On and subject to the conditions contained in the Indenture, this Loan Certificate is transferable by the registered holder hereof in person or by its duly authorized attorney on the Register (as defined in the Indenture) to be kept for such purpose at the principal corporate trust office of the Indenture Trustee. On and subject to the conditions contained in the Indenture, this Loan Certificate is exchangeable for Loan Certificates of other denominations. The Owner Trustee and the Indenture Trustee may deem and treat the person in whose name a Loan Certificate is registered on said Register as the absolute owner and holder hereof (whether or not this Loan Certificate shall be overdue) for the purpose of receiving payment and for all other purposes, and neither the Owner Trustee nor the Indenture Trustee shall be affected by any notice to the contrary.

Presentment, protest and notice of non-payment and protest are hereby waived by the Owner Trustee.

Unless the certificate of authentication hereof has been executed by the Indenture Trustee, by manual signature, this Loan Certificate shall not be secured by or entitled to any benefit under the Indenture and shall not be valid or obligatory for any purpose whatsoever.

This Loan Certificate and the Indenture are governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York.

It is expressly understood and agreed by and between the Owner Trustee, the Owner Participant, the holder of this Loan Certificate and the Indenture Trustee and their respective successors and assigns, that this Loan Certificate is executed by FSBU, not individually or personally but solely as "Owner Trustee" under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Owner Trustee; and that the indebtedness evidenced by the Loan Certificates is payable only out (and to the extent) of the Collateral. The Indenture Trustee by the execution of this Indenture and the holder of this Loan Certificate by its acceptance hereof agree that nothing herein contained shall be construed as creating any personal liability of FSBU, or of the Owner Participant, for payment of the indebtedness evidenced by the Loan Certificates or for any liability resulting out of a breach of any express or implied representation, warranty or covenant made by the Owner Trustee or the Owner Participant herein or otherwise in respect hereof or based on or in respect of the Indenture (other than those expressly made in the Owner Trustee's individual capacity in the Participation Agreement and in the Indenture); and (ii) they will not enter into any arrangement which would constitute cross collateralization or credit enhancement of the Loan Certificates within the meaning of Temp. Treas. Reg. sec. 1.861-10T(b), it being expressly understood by the Indenture Trustee and the holder hereof that neither the Owner Trustee (or any successor thereto) in its individual capacity, nor the Owner Participant, nor the Indenture Trustee, nor any other Person, shall have any personal liability whatsoever for any amounts payable under this Loan Certificate.

IN WITNESS WHEREOF, the Owner Trustee has caused this Loan Certificate to be duly executed.

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION, not individually but solely as  
Owner Trustee under BN Trust No. 89-\_\_

By \_\_\_\_\_  
Its: \_\_\_\_\_

NOTICE

THIS LOAN CERTIFICATE HAS NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE. THIS LOAN CERTIFICATE MAY NOT BE OFFERED OR SOLD UNLESS IT IS REGISTERED UNDER THE APPLICABLE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

Inquiries Should be Made to the Indenture Trustee if clarification as to Balance Due Hereunder is Required.

AUTHENTICATION CERTIFICATE

This Loan Certificate is one of the Loan Certificates described in the within-mentioned Indenture.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual capacity  
but solely as Indenture Trustee

By \_\_\_\_\_  
Its \_\_\_\_\_

SECURITY AGREEMENT AND TRUST INDENTURE  
SUPPLEMENT NO. \_\_\_\_

SECURITY AGREEMENT AND TRUST INDENTURE SUPPLEMENT NO. \_\_\_\_ (this "Indenture Supplement") dated \_\_\_\_\_, 19\_\_\_\_, between First Security Bank of Utah, National Association, a national banking association, not individually but solely as Owner Trustee (the "Owner Trustee") under BN Trust No. 89-\_\_\_\_, and Mercantile-Safe Deposit and Trust Company, a Maryland trust company not in its individual capacity but solely as indenture trustee (the "Indenture Trustee").

W I T N E S S E T H:

The Security Agreement and Trust Indenture dated as of November 1, 1989 (herein called the "Indenture") from the Owner Trustee to the Indenture Trustee, provides for the execution and delivery of an Indenture Supplement thereto substantially in the form hereof, which shall particularly describe the Equipment (such term and other defined terms in the Indenture being herein used with the same meanings) and shall specifically grant a security interest in such Equipment;

The Owner Trustee in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowledged, and intending to be legally bound, and in order to secure the equal and pro rata payment of both the principal of and interest and premium, if any, upon all Loan Certificates at any time outstanding under the Indenture according to their tenor and effect, and to secure the payment of all other Secured Indebtedness and the performance and observance of all the covenants and conditions contained in the Loan Certificates, the Indenture and the Participation Agreement, does hereby convey, warrant, mortgage, assign, pledge and grant unto the Indenture Trustee, its successors in trust and assigns, forever, for the ratable use and benefit of the holders of the Loan Certificates, a security interest in, all right, title and interest of the Owner Trustee in the Equipment (described in Schedule 1 attached hereto), as the same is now and will hereafter be constituted, whether now owned by the Owner Trustee or hereafter acquired, leased or to be leased under the Lease, together with all accessories, equipment, parts and appurtenances appertaining or attached to the Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to the Equipment together with all the rents, issues, income, profits and avails thereof, subject, however, to the interest of the Lessee under the Lease.

TO HAVE AND TO HOLD the aforesaid property unto the Indenture Trustee, its successors and assigns forever, upon the terms and conditions set forth in the Indenture for the equal and proportionate benefit, security and protection of all present and future holders of the Loan Certificates.

This Indenture Supplement shall be construed in connection with and as part of the Indenture and all terms, conditions and covenants contained in the Indenture, except as herein modified, shall be and remain in full force and effect.

Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Indenture Supplement may refer to the "Security Agreement and Trust Indenture dated as of November 1, 1989" or the "Indenture" without making specific reference to this Indenture Supplement, but nevertheless all such references shall be deemed to include this Indenture Supplement unless the context shall otherwise require.

Section 1.1. Counterparts. This Indenture Supplement may be executed and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Indenture Supplement.

Section 1.2. Governing Law. This Indenture Supplement shall be construed in accordance with any governed by the laws of the State of New York.

Section 1.3. Headings. Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Indenture Supplement nor shall they affect its meaning, construction or effect.

IN WITNESS WHEREOF, the Owner Trustee has caused this Indenture Supplement to be executed, and the Indenture Trustee in evidence of its acceptance of the trusts hereby created, has caused this Indenture Supplement to be executed on its behalf by one of its duly authorized officers.

FIRST SECURITY BANK OF UTAH, NATIONAL  
ASSOCIATION, not individually but solely  
as Owner Trustee under BN Trust No. 89-

By \_\_\_\_\_  
Its: \_\_\_\_\_  
AS OWNER TRUSTEE

(SEAL)

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual capacity  
but solely as indenture trustee

Attest: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Corporate  
Trust Officer

By \_\_\_\_\_  
Its: \_\_\_\_\_  
AS INDENTURE TRUSTEE

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of First Security Bank of Utah, National Association, that said instrument was signed and sealed on \_\_\_\_\_, 19\_\_\_\_ on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(SEAL)

My commission expires:

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of Mercantile-Safe Deposit and Trust Company, that said instrument was signed and sealed on \_\_\_\_\_, 19\_\_\_\_ on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

(SEAL)

My commission expires: